

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 27

UNITED STATES OF AMERICA, APPELLANT

v.

CONTAINER CORPORATION OF AMERICA, ET AL.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA**

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RELEVANT DOCKET ENTRIES

- 10-14-63 Filed complaint.
- 1-13-64 Answers of defendants filed.
- through
- 1-15-64
- 5-21-65 Filed stipulation dated April 22, 1965 and signed by counsel for all parties.
- 5-21-65 Filed stipulation dated April 22, 1965 as to certain documents and signed by counsel for all parties. Schedule attached thereto.
- 5-21-65 Filed further stipulation as to certain proof dated May 14, 1965 and signed by counsel for all parties; in one bound volume.
- 7-2-65 Memorandum—of plaintiff before trial, with certificate of service.
- 11-30-65 Defendants' statement of contentions—two copies delivered to D.A.
- 11-30-65 Defendants' objections to plaintiff's evidence—two copies also delivered to D.A.
- 12-16-65 Plaintiff's objections—to defendant's evidence, with certificate of service.
- 12-20-65 Filed deletions from depositions designated by the plaintiff.
- 12-20-65 Filed plaintiffs materiality of depositions.
- 1-14-66 Order of Proof (list of exhibits)—of plaintiff.
- 1-20-66 Contentions—of Continental Can Company, Inc.
- 1-20-66 Further contentions—of defendant International, with certificate of service.
- 1-21-66 Further contentions—of defendant Container Corp. of America, with certificate of service.
- 1-24-66 Contentions—of defendants, Albermarle Paper Mfg. Co., Dixie Container Corp., Dixie Container Corp. of N.C., Inland Container Corp., The Mead Corp., Miller Container Corp., Owens-Illinois Glass Co.
- 1-24-66 Contentions—of defendants, Tri-State Container Corp., Union Bag-Camp Paper Corp., West Virginia Pulp and Paper Co., and Weyerhaeuser Co.
- 1-24-66 Designation of deposition of testimony—of defendant Inland Container Corp.
- 1-24-66 Additional contentions—of defendant, St. Joe Paper Co. with certificate of service attached.

- 1-24-66 Further statement of contentions—of defendant, Crown Zellerbach Corp.
- 1-24-66 Designation of deposition testimony—of defendant, Union Bag-Camp Paper Corp.
- 1-24-66 Designation of deposition testimony (as corrected)—of defendant, Owens-Illinois Glass Co.
- 1-24-66 Amended designation of deposition testimony—on behalf of certain defendants; Continental Can Co., Inc., Crown Zellerbach Corp., The Mead Corp., St. Joe Paper Co., International Paper Co., Container Corp. of America, West Virginia Pulp and Paper Co., Dixie Container Corp., Dixie Container Corp. of N.C., Tri-State Container Corp., St. Regis Paper Co., Miller Container Corp., Albemarle Paper Mfg. Co., Weyerhaeuser Co., and Carolina Container Co.
- 1-24-66 Designation of deposition to be received as evidence—by defendant Carolina Container Co.
- 1-24-66 Separate contentions—of defendant, Carolina Container Co.
- 1-24-66 Supplemental Contentions—of defendant, St. Regis Paper Co. with certificate of service attached.
- 1-24-66 Memorandum of points and authorities—of plaintiff, with certificate of service.
- 1-26-66 Trial by court—called before Judge Stanley of Greensboro.
- 2-1-66 General objections—of Owens-Illinois Glass Company to portion of plaintiff's evidence, with certificate of service.
- 4-18-66 Deposition testimony introduced in evidence—in accordance with stipulation approved by Judge Stanley, 4-15-66. Court exhibits marked as follows:
 Volume I containing pages A-1 through A-197 as Court Exhibit 4;
 Volume II containing pages A-198 through A-405 as Court Exhibit 5;
 Volume III containing pages A-406 through A-613 as Court exhibit 6;
 Volume IV containing pages A-614 through A-777 as Court exhibit 7.
- 5-3-66 Plaintiff's proposed findings of fact—with certificate of service.
- 5-3-66 Defendants proposed findings of fact—with certificate of service.

- 6-2-66 Plaintiff's memorandum—in opposition to defendants' evidential objections dated 5-18-66, with certificate of service.
- 6-2-66 Plaintiff's post-trial brief—with accompanying appendix, with certificate of service.
- 10-14-66 Post-trial brief—of defendant.
Memorandum—of defendants in support of proposed findings of fact and in opposition to certain of plaintiffs' proposed findings of fact. 2 Volumes.
Documentary supplement—of defendant with indices—2 Volumes.
Indices—of defendant—2 Volumes.
Certificate of service—of defendant.
- 1-11-67 Oral arguments—called before Judge Stanley in Greensboro.
- 8-31-67 Findings of fact & conclusions of law—of Judge Stanley, ruling that plaintiff is not entitled to injunctive relief and defendants are entitled to a judgment dismissing the complaint with prejudice.
- 8-31-67 Judgment—signed by Judge Stanley, denying relief of plaintiff and dismissing complaint with prejudice. Each party to bear its own costs.
- 10-30-67 Notice of appeal—of U. S. to Supreme Court of the United States.

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendants named herein and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. § 4), entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 1 of that Act (15 U.S.C. § 1).

2. Each of the defendants transacts business and is found within the Middle District of North Carolina.

II

Definitions

3. As used herein, the term "corrugated containers" means all kinds of corrugated shipping containers made of kraft paperboard.

4. As used herein, the term "Southeastern United States" means the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee and Kentucky.

III

The Defendants

5. The corporations listed below are named as defendants herein. Each of these defendants is organized and exists under the laws of the state, has its principal place of business in the city, and has plants in the Southeastern United States as indicated below:

Name	State of Incorporation	Principal Office	Plants in Southeast
Container Corporation of America	Delaware	Chicago, Ill.	Fernandina, Fla. Memphis, Tenn. Nashville, Tenn. Chattanooga, Tenn. Knoxville, Tenn. Lexington, Ky. Louisville, Ky. Winston-Salem, N.C. Richmond, Va.
Albemarle Paper Manufacturing Company	Virginia	Richmond, Va.	
Carolina Container Company	North Carolina	High Point, N.C.	High Point, N.C.
Continental Can Company, Inc.	New York	New York, N.Y.	Atlanta, Ga. Martinsville, Va. Richmond, Va. Atlanta, Ga. Greenville, S.C. Miami, Fla. Tampa, Fla. Richmond, Va.
Crown Zellerbach Corporation	Nevada	San Francisco, Calif.	
Dixie Container Corporation	Virginia	Richmond, Va.	
Dixie Container Corporation of North Carolina	Delaware	Morganton, N.C.	Morganton, N.C.
Inland Container Corporation	Indiana	Indianapolis, Ind.	Winchester, Va. Macon, Ga. Orlando, Fla. Rome, Ga. Louisville, Ky. Auburndale, Fla. Georgetown, S.C. Atlanta, Ga. Durham, N.C. Louisville, Ky. Memphis, Tenn. Miami, Fla. Roanoke, Va.
International Paper Company	New York	New York, N.Y.	
The Mead Corporation	Ohio	Dayton, Ohio	
Miller Container Corporation	Virginia	Roanoke, Va.	
Owens-Illinois Glass Company	Ohio	Toledo, Ohio	Atlanta, Ga. Miami, Fla. Memphis, Tenn. Jacksonville, Fla. Salisbury, N.C. Birmingham, Ala. Memphis, Tenn. Port St. Joe, Fla. Portsmouth, Va. Jacksonville, Fla. Atlanta, Ga. Birmingham, Ala. Elizabethton, Tenn.
St. Joe Paper Company	Florida	Jacksonville, Fla.	
St. Regis Paper Company	New York	New York, N.Y.	
Tri-State Container Corporation	Tennessee	Elizabethton, Tenn.	
Union Bag-Camp Paper Corporation	Virginia	New York, N.Y.	
West Virginia Pulp and Paper Company	Delaware	New York, N.Y.	
Weyerhaeuser Company	Washington	Tacoma, Wash.	Lakeland, Fla. Jamestown, N.C. Savannah, Ga. Spartanburg, S.C. Gastonia, N.C. Richmond, Va. Florence, Ala. Tampa, Fla. Charlotte, N.C. Lynchburg, Va. Newton, N.C.
The Waterbury Corrugated Container Co.	Connecticut	Waterbury, Conn.	

6. The acts alleged in this complaint to have been done by each defendant were authorized, ordered, or done by the officers, agents, employees, or representatives of such defendant while actively engaged in the management, or control of its affairs.

IV

Trade and Commerce involved

7. Corrugated containers are made of kraft paperboard which is chiefly characterized by its strength. Manufacturers produce corrugated containers in various shapes and sizes according to the needs of their customers. While corrugated containers are shipped as flat board they have been previously cut and prepared for folding into the desired shapes and sizes for use as containers.

8. Corrugated containers are used for shipment of a wide variety of products. They are widely used in the Southeastern United States for shipment of textiles, tobacco products, furniture, fruits, and poultry products. Virtually all corrugated containers sold in the Southeastern United States are made to customer specification. The few that are not are primarily sold to shippers of fruit and eggs.

9. During the period of time covered by this complaint, each of the corporate defendants has sold and shipped substantial quantities of corrugated containers to customers located in states other than the state in which said corrugated containers were manufactured. Total sales of corrugated containers manufactured in the Southeastern United States by the defendants amount to approximately \$200,000,000 per year, and represent in excess of 90% of all sales of such products in the Southeastern United States.

V

Offense Charged

10. Beginning at least as early as 1955, the exact date being to the plaintiff unknown, and continuing up until the date of this complaint, the defendants have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in cor-

rugated containers, in the Southeastern United States, in violation of Section 1 of the Sherman Act. Such unlawful combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

11. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants to exchange among themselves information respecting prices that they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers.

12. For the purpose of effectuating the aforesaid combination and conspiracy the defendants have done those things which as hereinbefore charged they combined and conspired to do.

VI

Effects

13. The combination and conspiracy has had the effect, among others, of unreasonably restricting price competition in the sale of corrugated containers to purchasers located in the Southeastern United States.

VII

Prayer

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the defendants, and each of them, have engaged in a conspiracy and combination in unreasonable restraint of the aforesaid trade and commerce in corrugated containers as hereinabove alleged, in violation of Section 1 of the Sherman Act.

2. That each of the defendants, its successors, assignees, and transferees, and the respective officers, agents, and employees thereof, be perpetually enjoined and restrained from:

- (a) Continuing to carry out, directly or indirectly, the combination and conspiracy hereinbefore alleged, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from

adopting or following any practice, plan, program, or device having a similar purpose or effect;

- (b) Furnishing to, or requesting from, any other manufacturer of corrugated containers, by reference to a pricing manual or by any other means, any information concerning prices, terms, or conditions for the sale of corrugated containers to any specific customers;
- (c) Entering into any agreements, arrangements, or understandings with any other persons to eliminate or suppress competition in the sale of corrugated containers.

3. That the plaintiff have such other, further, and different relief as the Court may deem just and proper in the premises.

4. That the plaintiff recover the costs of this suit.

Dated:

Robert F. Kennedy, Attorney General. Robert L. Wright, First Assistant to the Assistant Attorney General. Lewis Bernstein, Attorney, Department of Justice. —, —, United States Attorney.

Wharey M. Freeze. John L. Sliney, Attorneys, Department of Justice.

ANSWER

Defendant Container Corporation of America, answering the Complaint heretofore filed herein, says and alleges:

First Defense:

1. Denies each and every allegation contained in paragraph "1" of the Complaint, except that it admits that the Complaint is purportedly brought under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, 15 U.S.C. § 4 to prevent and restrain alleged violation by the defendants of Section 1 of that Act (15 U.S.C. § 1).

2. Admits the allegations of paragraph "2" of the Complaint as to it and denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph "2" as to the other defendants.

3. Denies each and every allegation contained in paragraph "3" of the Complaint, except that it admits that said paragraph sets forth a definition by plaintiff of the term "corrugated containers".

4. Denies each and every allegation contained in paragraph "4" of the Complaint, except that it admits that said paragraph sets forth a definition by plaintiff of the term "Southeastern United States".

5. Admits the allegations contained in paragraph "5" of the Complaint as to it, and denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph "5" as to the other defendants.

6. Denies each and every allegation contained in paragraph "6" of the Complaint.

7. Denies each and every allegation contained in paragraph "7" of the Complaint, except that it admits that corrugated containers are made of kraft paperboard, one of the characteristics of which is its strength, and of other materials, that manufacturers produce corrugated containers in various shapes and sizes according to the needs of their customers, and that corrugated containers are shipped as flat board after having previously been cut and prepared for assembling into certain shapes and sizes for use as containers.

8. Denies each and every allegation contained in paragraph "8" of the Complaint, except that it admits that corrugated containers are used for shipment of a wide variety of products, are widely used in the Southeastern United States for shipment of textiles, tobacco products, furniture, fruits, poultry products and other products, that most of the corrugated containers sold in the Southeastern United States are made to customer specifications and that some of the standard corrugated containers are sold to shippers of fruit and eggs.

9. Admits the allegations contained in the first sentence of paragraph "9" of the Complaint as to it and denies that it has any knowledge or information sufficient to form a belief as to the truth of any of said allegations as to the other defendants, and admits the allegations contained in the second sentence of said paragraph "9".

10. Denies each and every allegation contained in paragraph "10" of the Complaint.

11. Denies each and every allegation contained in paragraph "11" of the Complaint.

12. Denies each and every allegation contained in paragraph "12" of the Complaint.

13. Denies each and every allegation contained in paragraph "13" of the Complaint.

Second Defense:

14. On April 23, 1940 a Consent Decree was duly entered by the United States District Court for the Southern District of New York in an action entitled "*United States of America, Plaintiff, against National Container Association, et al., Defendants*", Civil Action No. 8-318, to which action both the plaintiff herein, United States of America, and defendant Container Corporation of America, were parties. A true copy of said Consent Decree is annexed hereto, made a part hereof and marked Exhibit "A". Said Consent Decree is a valid and subsisting decree and is binding upon the plaintiff and this defendant herein.

15. To the extent that the Complaint herein is based upon acts done by defendant Container Corporation of America in reliance upon and in accordance with said Consent Decree, the Complaint herein and the maintenance of this action constitute a collateral attack on the said Consent

Decree entered by the United States District Court for the Southern District of New York, and plaintiff is precluded and estopped from asserting that such acts constitute engaging in a combination or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act. Plaintiff is foreclosed from seeking any relief in this Court with respect to such acts additional to that provided for in said Consent Decree, and this defendant pleads said Consent Decree in bar of plaintiff's right to such relief prayed in this cause.

Third Defense:

16. The Complaint fails to state a claim upon which relief may be granted against defendant Container Corporation of America.

WHEREFORE, defendant Container Corporation of America respectfully prays the Court:

(1) That the relief prayed in the Complaint not be granted and that this action be dismissed;

(2) For such other and further relief as to the Court may seem just and proper.

Whitney North Seymour, 120 Broadway, New York 5, New York. Telephone WOrth 4-1900. William J. Manning, 120 Broadway, New York 5, New York. Telephone WOrth 4-1900. R. M. Stockton, Jr., 610 Reynolds Building, Winston-Salem, North Carolina. Telephone PArk 5-2351. Attorneys for Defendant Container Corporation of America.

Of Counsel: Simpson Thacher & Bartlett, 120 Broadway, New York 5, New York. Telephone WOrth 4-1900. Hudson, Ferrell, Petree, Stockton and Robinson, 610 Reynolds Building, Winston-Salem, North Carolina. Telephone PArk 5-2351.

I certify that I have served this Answer upon the plaintiff, United States of America, by delivering three copies to W. H. Murdock, Esq., United States Attorney for the Middle District of North Carolina, at his office at the United States Post Office Building, Greensboro, North Carolina.

Dated: Winston-Salem, North Carolina, January 15,
1964.

R. M. Stockton, Jr., 610 Reynolds Building, Winston-
Salem, North Carolina.

[Tr. 1]

CONFERENCE WITH ATTORNEYS

Greensboro, North Carolina, May 14, 1965,

3:00 o'clock P. M.

APPEARANCES:

William H. Murdock, United States Attorney, Lewis Bernstein, Esq., and Wharey M. Freeze, Esq., Department of Justice, appearing on behalf of the Plaintiff.

Upon inquiry by the Court, it was determined that all Defendants were represented by counsel as appears of record.

A conference with attorneys in the above-styled case was had before the Honorable Edwin M. Stanley, Presiding Judge, in the United States Courtroom, Post Office Building, Greensboro, North Carolina, on the 14th day of May, 1965, commencing at 3:00 o'clock P. M.

[Tr. 14] Mr. Johnson: If the Court please, I represent Continental Can, one of the defendants in this case. I have no authority to speak for any of the other defendants and I do not purport to. However, I have served as informal coordinating chairman in the attempt to work out the procedures with the Government on behalf of all of the defendants. In the sense that we have brought the stipulations to a conclusion, I think in that sense I can speak for the defendants, if no other.

I think at this point we have to start talking a little bit about this case, the nature of the case rather than just the procedures which we are concerned with, in order to get some understanding of what the problems of preparing are and what the scope of the defendant's problems are in this case.

[Tr. 22] Mr. Bernstein: I believe that it's clear from Mr. Johnson's presentation that what is at issue here is a legal question, not a factual question, because the facts have been stipulated. So that whether or not any one of these docu-

ments is admissible and the relevancy would have to be addressed to the Court; necessarily involved in that is a legal argument. It seems to me that although the pre-trial procedures and the Rules of the Court are designed to expedite trials, to get them to trial as quick as possible, and to save time at trial, the Court is not really saving any time at all when it hears legal arguments in bits and pieces in the form of pre-trial conferences in connection with procedures. But the appropriate time to hear legal arguments is when the record is closed. All the objections would be reserved, the [Tr. 23] Government would contend, that all of this matter be objected to by each of the defendants with the right to reserve and the question of relevancy considered after legal arguments are made.

Now what Mr. Johnson is suggesting is that the Government now provide them with a detailed specification of what it contends each statement and each document which it proposes to offer in evidence is relevant to its case or what each statement a witness made on a deposition, how that moves the case along. That is really the function of the argument at the trial; that is really the nature of the trial. Therefore, I suggest that at some point or other the defendants have to make a decision. They know all of the material that the Government is going to introduce into evidence. They reserve their objection—they object to all of it as to relevancy; there is no objection as to competency except perhaps that a document admissible as to one defendant may not be considered as to another defendant, and that kind of objection. But when the Court considers that objection, it would necessarily have to do it in the context of the whole case and in the context of the issues and in the context of the legal argument.

Now the plaintiff's contentions, when it gets down to Paragraph 6 and Paragraph 7, that is the gist of the whole case. Mr. Johnson would have the Court believe that this is [Tr. 24] a very complicated, drawn-out matter; and the Government suggests that this is a very simple legal question—a difficult question, but it is not this complicated, complex factual question that the defendants would have you believe. Paragraph 6 contends—it asks the Court to infer from this business practice, because continuously and over a long period of time information was obtained in this fashion, the Court can infer that there was an understand-

ing or everyone understood that upon request the information would be furnished.

Now Paragraph 7 is the gist of the Government's case; it's the whole case. Contention 7 is that the purpose for which this information was exchanged was to restrict price competition among the defendants; and the Government contends that the Court can find this purpose from the conduct of the defendants as declared in the documents, in the memoranda that they prepared contemporaneously, and the letters that they exchanged intracompany or intercompany, and from the testimony of the officials of these defendants in their depositions when they related how they did business, what their contacts were with their competitors, what the reasons were, why they gave this information and why they received this information.

Those are the facts upon which the Government asks the court to infer that this purpose was not, as has been contended here today, routine business practice that has continuously been carried on in every industry, but the purpose [Tr. 25] was an unlawful purpose: to restrict competition. Therefore, the Government contends that the Court can only decide that in the context of taking all this material, opening the record, taking this material into evidence, reserving the objections of the defendants to all of the documents or all of the depositions, reserving that, having the argument; the Government will file its pre-trial brief at a specified time before the trial begins, at which it will detail which statement of which witness is relevant and significant to the question showing the ulterior purpose of the defendants, which paragraph in which document, and the documents will be annotated and the page and paragraph of the deposition will be annotated. But that is trial procedure, not pre-trial procedure. And with that before them, the defendants are then prepared for their legal argument, legal argument that this conduct does not constitute a violation.

I respectfully suggest that following any procedure other than following a trial date in September, scheduling additional pre-trial conferences and additional conferences and getting into that with 17 defendants, will not save time but it will just delay the ultimate disposition in this matter.

[Tr. 28] The Court: Well, Mr. Johnson, I believe if you can if you will tell me what time we have involved—I'm afraid we will not accomplish anything by getting into the merits at the moment of this controversy. But I was trying to suggest a time that you consider would be fair to all the defendants for the Government to file this, and then we will start thinking about a schedule for the future. Whether that [Tr. 29] schedule will be December or January, that's quite immaterial at the moment. Let's do what appears to be fair to both sides and see if we can agree on a schedule, and we will take such time as is necessary to accomplish that.

Mr. Johnson: I would suppose that the defendants, having in mind their many different interests and cross-interests, would need three months after the time this document that the Government is talking about was furnished them in order for them to determine what of the documents, what of the material that is now stipulated they would want to use and what objections they would want to make to the material that is being offered. I can't overemphasize the problem of communication relationship between various defendants. Of course, one way to do it would be to throw it all out to the Court.

The Court: Well, let's not talk about that.

Gentlemen, believe me, I commend both sides for the spirit with which you have approached this problem down to now and I hope you will continue, and everything I have said has been in that spirit, to see if we can't, in fairness to both sides.

Mr. Johnson: We appreciate that, sir.

The Court: And the Court deeply appreciates the manner in which both sides have approached this. I realize that the defendants, 19 or 17 or whatever number is still in [Tr. 30] the case, all operate different businesses in different sections of the country and everybody is doing something a little different from the other; and having different counsel and different ideas as to the approach, I understand that you have had quite a problem. That's the reason why I say I appreciate it and why we have tried to go along with fixing these schedules that are realistic and that are fair, bearing in mind that problem.

But let's see what Mr. Bernstein has to say about—
Well, let me ask you first, Mr. Johnson, how long now do

you think the defendants would reasonably require to designate the parts of the depositions heretofore taken which the defendants desire to introduce into evidence? Now I know that your stipulation calls for 15 days before trial, but actually without regard to this.

Mr. Johnson: Well, I am at a disadvantage in trying to answer that because the Government has now designated several hundred pages of testimony which it says it wants to use. I don't know what they intend to use it for; I don't know what theory they intend to offer it. A great part of that is done against my client; it's other people talking. I am in the position of having a very vague charge, that is: Because a trade practice exists, it must necessarily be an agreement; and if it is necessarily an agreement, the purpose must be to restrict competition. I don't know any more than [Tr. 31] that. What I need to have before I can get down to serious determination even on behalf of my own client to try to decide what I want to offer of the depositions, I need a much better understanding than I now have of what the Government is using all these nine hundred odd pages of material for.

Mr. Bernstein: Perhaps I could clarify that right at this moment, Your Honor. It's this simple proposition: The Government contends what whatever the pages in the depositions and whatever the contents of the documents are are offered in evidence to prove that the purpose for which this information was exchanged was to restrict price competition among the defendants. It's as simple as that. That is the purpose and this is the way the Government is going to prove that this was the purpose of the defendants, through these pages in the depositions.

Now insofar as the depositions are concerned, I can tell the Court and defense counsel quite frankly, we have designated in effect the entire deposition, keeping out those items that are chaff, that were in the nature of discovery that didn't go anywhere, that didn't evidence anything. I would imagine that some portions of that the defendants might wish to have in, but I predict that there is not too much of that.

So I don't think that the burden is quite the same. The defendants are apprised of what the Government's [Tr. 32] contentions are. It contends that these documents and the

depositions are all offered for the purpose of showing that the defendants' purpose in exchanging this information by the business practice was to restrict competition.

Now taking up Your Honor's suggestion before that perhaps it would be helpful for the Government to prepare its pre-trial memorandum first, then that will eliminate that argument; there is no question about that. And I am contemplating the idea that perhaps that might be the fastest way of doing it. If the Government—if we fix the time now for that to be the next task, the Government will submit its memorandum, pointing to chapter and verse of how it contends that the purpose of this exchange of information was to restrict competition. Then, if 60 days thereafter, the defendants will designate the documents that they intend to rely on and the documents—the portions of the depositions that they wish and the defendants' contentions, I would think that the matter is ready for trial. I don't see why it should take more than 60 days when the Government not only, not only submits all of its documents, all of its testimony, but in addition shows the significance of the testimony.

The Court: Well, of course, this is the first time we have had any discussion here of the theory of the Government's case. I have read the pleadings. This, of course, is the first time I have seen the Government's contentions. [Tr. 33] But it would seem, Mr. Johnson—and when I speak to you, I speak to all of the defendants—that we have a factual problem first: Does this evidence prove or tend to prove that the purpose of whatever agreement there was between the defendants or whatever they did was to restrict price competition? The Government says they contend that it does tend to prove that and that the Court should infer it. But that is a factual problem which you and your associates and counsel for all of the defendants will at the appropriate time urge that it does not tend to establish that fact.

Now what do you have to say to what Mr. Bernstein has proposed? That he will first submit to you a detailed analysis of all of the evidence that he has designated, that is, all of the exhibits that he has designated and all of the deposition testimony that he has designated, his entire case; and he points out the significance of each document as it tends to prove the ultimate contention: that the Court should infer that the purpose of the action of the defend-

ants was to restrict price competition, or contentions to that effect. Do you have all of that in your possession?

Mr. Johnson: Well, first with respect to your comment that this is a factual question, I don't disagree with that but before we get to that we do have the question of the relevance of any material that he has got and proposes to offer to each of 17 different defendants. Now whether this is [Tr. 34] a great problem or not, I don't know.

The Court: What suggestion do you have as to how that can be handled? Until you see the evidence and maybe you have to see it in its totality, you have to see it all, as to whether or not it has any relevance or significance at all; and actually, being a non-jury matter, if it is received in evidence and has no relevance to the issues, why it just amounts to so many papers in the record. Now I am not suggesting by that that you should open the door and permit everything real and imaginary to come in, but it's a most difficult thing to rule on the relevancy of a document until it is considered in the context of the other documents, particularly where a conspiracy is charged. It might appear to be totally irrelevant at one stage but at another stage it might appear to be totally relevant.

Mr. Johnson: I'm not sure whether the Government has or has not yet given up the theory of conspiracy. This is probably one of the reasons why we need to get more explicitly their contentions. However—

Mr. Bernstein: I can make that clear right now, Your Honor, make that clear right now.

The Court: All right.

Mr. Bernstein: The Government is going to contend that each of these documents and each of these depositions should initially be received only as against the defendant who [Tr. 35] wrote the document or received the document or made the statement; and then after it's all received, the Government is going to move that all of this evidence be received as against all defendants on the ground that there was a combination, there was a concerted conspiracy in the sense that there was a concerted effort to restrict competition. There was a common purpose, a common objective: in that sense, a conspiracy; not a conspiracy in the sense that they met in a dark room and shook hands and agreed this was what was going to be done.

Now this is all a legal question and the Government

contends that each defendant is put on notice now by the Government that it intends to move that all of this evidence, whether it was made by a specific defendant or not, be considered against that defendant after all the evidence is in as against each individual defendant, because the Government will contend that this testimony in the depositions, these documents, will show as to each a participation in a concerted effort to restrict price competition and therefore the evidence should be admissible against all.

[Tr. 1]

December 20, 1965, 2:00 o'clock P. M.

APPEARANCES:

William H. Murdock, United States Attorney, Lewis Bernstein, Attorney, Department of Justice, and Wharey M. Freeze, Attorney, Department of Justice, appearing on behalf of the Plaintiff.

Upon inquiry by the Court, it was determined that all Defendants were represented by counsel as appears of record.

A conference with attorneys in the above-styled case was had before the Honorable Edwin M. Stanley, Presiding Judge, in the United States Courtroom, Post Office Building, Greensboro, North Carolina, on the 20th day of December, 1965; commencing at 2:00 o'clock P. M.

[Tr. 9] Mr. Johnson: If the Court please, at the time we set about to prepare the contentions of the defendants as required by the Court's order of May 12th, we were confronted with the problem of just what the defendants' contentions would be, how they could be stated in the light of the Government's designation of the evidence, and the material which they had indicated they were prepared to offer. As a result, in preparing our contentions we stated that we might have further separate different contentions depending on the ruling with respect to the admissibility of the evidence or depending on our ability to resolve our objections with the Government. This latter was not possible to do.

I would like to go back into the pre-trial conferences for a moment, going first to the very first pre-trial conference of January 28, 1964. At that time [Tr. 10] Mr. Bernstein, for the Government, addressing the Court, said:

"It is the Government's desire, proposal, or suggestion that after these depositions are taken and both parties have had the opportunity to hear the witnesses testify as to what the facts are as to how the defendants did business at the same time, then the Government would submit to the defendants proposed find-

ings, which could be either proposed stipulations or proposed requests for admissions, so that the defendants could indicate which of these facts they propose to controvert or which of these facts they would deem admitted for the purpose of this lawsuit. At that point, the issues could then be narrowed or at that point the defendants could then decide whether they need certain discovery or certain further facts to bring out the defense."

Later in the same conference Mr. Bernstein says "these depositions—" Let me start at the beginning of the sentence:

"It is the Government's preference, Your Honor, that these depositions be proceeded with as soon as possible, as you outlined, in February [Tr.11] and March; and immediately after that, if the defendants wish, before they can determine whether they want discovery or what has to be done, the Government would be prepared to submit its proposed findings on that case or whatever you want to call it, proposed stipulations or requests to admit, whatever form it takes; but it would be the substance of the plaintiff's affirmative case. This would give the defendants the opportunity to determine whether they want to discover evidence in opposition to it or whether they want to rely on this evidence in the legal matter. Then we can proceed with the issues on the Government's affirmative case."

A little bit later, at the next pre-trial conference—maybe not the next, but the pre-trial conference in February, on the 25th of February, 1964, Mr. Bernstein addressed the Court:

"Now with respect to the items in Rule 22—" That's on Page 9. "Now with respect to the items in Rule 22, with respect to item one, the time reasonably required for the completion of discovery, it was the Government's statement to the defense counsel this morning—and there appeared to be no disagreement with it—the Government [Tr.12] proposes that after a cross-examination and a redirect-examination has been com-

pleted on the part of the Government, the Government will then within a reasonable time thereafter furnish the defendants with its proposed findings of fact so that there would be an opportunity to determine what factual matters are actually at issue. It was the Government's thought that at that time counsel would meet again and make a further report to the Court, as to what time is reasonably required for the completion of discovery."

Pursuant to the arrangements made in those pre-trial conferences, the depositions of 35 or so representatives of the defendants were taken in March of 1964; and following out the suggestion made by Mr. Bernstein at that time and then approved by the Court, the Government did on April 21 send a letter to all defense counsel. This letter dated April 21, 1964, reads:

"Gentlemen: Attached hereto are forty proposed findings of fact submitted to you in accordance with the provisions of the pre-trial conference of February 25, 1964, in the above matter. These do not, however, represent all [Tr. 13] of our proposed findings. We expect to submit additional findings to you no later than April 30, 1964.

"We will look forward to having your reactions to these and our additional proposed findings of fact after you have had an opportunity to study them."

On April 30, 1964, the Government addressed a letter to all defense counsel. This letter reads:

"Attached hereto are the additional findings of fact referred to in our letter of April 21, 1964. Sincerely yours."

There followed, Your Honor, many months of work on stipulations. During this period a group of counsel representing the defendants met, first, with themselves many times, with representatives of other counsel, in an attempt to reconcile first their differences; then they met with representatives of the Government in meeting after meeting to work out stipulations which were based on these proposed findings of fact of the Government. The stipulations which

were worked out represented the distillation of the factual matter that was in the depositions insofar as the Government had indicated was material to this case. It represented reconciliation of inconsistencies between [Tr. 14] the defendants, between the different witnesses, and it represented the filling in of a great deal of information that was not in the depositions, but from our own information. It represented very careful wording of stipulations in a form that we could agree to, that we were willing to accept.

During the course of these negotiations there were two subjects which the Government had indicated in its April letters as I referred to which the defendants and the Government were not able to agree on any stipulation. These related to a meeting of some representatives of some defendants that was alleged to have been held in the Marriott Hotel somewhere in Virginia, and a meeting that is alleged to have taken place in Richmond, Virginia. With respect to these two fact situations we do not now raise objection because we admit that they were the subject of negotiations; we were not able to arrive at any stipulation with respect to them.

There was one other point that was proposed in the Government's proposed findings of fact that was not dealt with at that time. It was a conclusory paragraph to the effect that there was an agreement amongst the defendants. While it was not dealt with specifically as a stipulated fact, it was dealt with in the stipulations. [Tr. 15] In the Further Stipulation As to Certain Proof it was agreed that the plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidences an express agreement to exchange price information in order to restrict competition. However, the plaintiff contends that from the facts contained in such record the Court may infer that to exchange information as to the most recent quoted price of corrugated containers and that from such agreement together with such facts, the Court may infer an agreement to restrict competition. The defendants deny that there was any agreement to exchange price information or to restrict competition, and contend that no such agreement or agreements can be inferred.

Notwithstanding this elaborate stipulation, the many hours work that went into this, the attempt to narrow the factual disputes down to an absolute minimum, the Gov-

ernment now proposes to introduce in this record the raw material from which these stipulations were prepared. They propose, Your Honor, that you should do now, begin the very thing that we spent all of these thousands of hours working to do. They propose also that they should determine at their pleasure when they please what relevance, what materiality, this has to [Tr. 16] this litigation.

[Tr. 20] Here we are confronted with the Government's theory. With having worked out a stipulation, they propose that Your Honor should draw the conclusions from this material which we have been working to stipulate over these many months. In our two conferences a few days [Tr. 21] ago that Mr. Smith referred to, conferences with the Government, they did agree that they would delete very few bits and pieces from their designation. However, Mr. Bernstein agreed with us at the time that any deletions that he would make did not go to the essence of our objections here. In other words, the things that he was proposing to delete were things that he had concluded for one reason or another he didn't propose to use, but he was not willing and would not go to the extent, he would not agree with our objections that material which has been stipulated was not the proper subject of evidence at this time.

It's our contention that the proposed extracts from the depositions which the Government now proposes to introduce are clearly immaterial since the April 1964 proposed findings of fact in this case purported to be the Government's whole case. Up until very recently it appeared as if that was also the Government's view of the case. As recently as May 1965 in the pre-trial conference here, Mr. Bernstein, addressing the Court, says:

"I believe that it's clear from Mr. Johnson's presentation that what is at issue here is a legal question, not a factual question, because the facts have been stipulated."

[Tr. 22] Apparently somewhere the Government has got cold feet on what their theory was and now proposes additional material and will not be willing to rely on the stipulations that were so carefully worked out.

Our position with respect to the stipulations is spelled out at some length in our objections. Just in summary of them, they are these: that stipulations are favored in law as a means of simplifying cases, that they are controlling, that they are obviously the results of compromise, that they do cover the Government's theory of the case, that material which relates to stipulated material should be excluded.

[Tr. 25] Mr. Bernstein: May it please the Court, if we were to objectively analyze the position enunciated by Mr. Johnson, I think we must conclude that his objections are based on two grounds. His first ground is that the Government is estopped from offering the [Tr. 26] depositions, and he relies on the Burstein case and all the other cases in his memorandum for the proposition that once matters have been stipulated no further evidence can be used to contradict them or to controvert them, nor can the Court make a finding contrary to the facts that the parties stipulated.

The Government has no quarrel with that principle of law. The Government does not offer any one of the portions of these depositions for the purpose of contradicting any of the facts that it has stipulated has been deemed proved. The purpose of the depositions or the portions of the depositions is to supplement those facts that have been agreed upon in broad outline and to provide some flesh to the skeleton that the parties have agreed to, or to clarify or to make more comprehensible to the trier of the facts as to what the conduct of these parties was.

Therefore, the Government taking the position that there is no legal basis for an estoppel, the question then boils down to one of materiality; and that is why the Government took the position that it did before that the question of whether the portions of the depositions are material should only be decided by the Court after there is considered the evidence at the trial. For example, the cup of coffee that Mr. Johnson [Tr. 27] made much of and reiterated in portions of the testimony, they referred to the cup of coffee. Now at the trial we are prepared to argue, when these matters are presented, that it is very important, the cup of coffee incident, because it demonstrates that although those

witnesses who profess no knowledge of anything about the meeting except the cup of coffee were all talking about the same meeting at DiMizio's Restaurant, and the man who did remember said that the purpose of the meeting was to determine how the customers were receiving the increased prices on set-up charges.

Now that stipulation merely provided that on July 20, 1959, there was a meeting at DiMizio's Restaurant in Salisbury, North Carolina, at which representatives of certain named defendants were present and at which some of them exchanged views as to how the trade had accepted increase in set-up charges. Now that's the broad skeleton of it. The depositions will identify the particular people who were there, and the cup of coffee indicates that the men who were there who said they didn't know anything about it were talking about the same meeting; and the purpose of that bit of evidence is to show that the very same people who were at that meeting discussing acceptance by customers of set-up charges were the same people who were giving [Tr. 28] their competitors the latest information as to what price they had quoted a customer for a custom-made container or what price they had charged a customer for a custom-made container. And all of this is designed to show that when those same individuals were giving that information and exchanging that information, they were doing it for the general purpose of reducing competition, because it was part of their overall conduct that they displayed in DiMizio's and other places of having uniform pricing conduct. They were meeting to discuss activities that would enable them to make their pricing decisions in compatibility with their competitors and thereby reduce competition.

Now I do not desire nor propose nor do I think it's appropriate at this time to burden the Court with all of the elements of substance concerning this case. I merely use that to show that there are extensive legal arguments involved in the question of whether or not it is material to go into these matters, and the time for that is at the trial.

[Tr. 32] That is the only ground for objection, relevancy or materiality, not estoppel. The stipulation did not provide

that no portion of the depositions to which stipulations have been made on the subject shall be received in evidence because they relate to the same subject matter. The only objection reserved was materiality and relevancy. And it's for that reason that the Government contends that the determination of whether these portions of the depositions should be received in evidence depends only—only—on whether or not they are material.

Now with respect to that we had several conferences with defense counsel and the Government stated their position, stated that it was not an estoppel. It stated, however, that because the Government desired, and it was to the best interest of all the parties, to resolve as many issues as possible, the Government stated that without yielding at all on its position that it was not estopped from offering any portions of the depositions in evidence—the only [Tr. 33] question would be materiality and that is a question related to the trial—it would, nonetheless, review each portion of the depositions to which the defendants had made objections, and those portions are designated in the Defendants' Objections to Plaintiff's Evidence, Appendix A.

The Government then, after reviewing all of those portions of the depositions referred to in Appendix A and B, prepared a list of those portions of the depositions that it proposed to withdraw and not offer in evidence—rather than withdraw, not offer in evidence—so that the area of the argument about the particular line of the particular witness's testimony would be narrowed somewhat. The Government has distributed to the defendants this morning a list dated December 17, 1965, containing the deletions from the depositions designated by the plaintiff, and with Your Honor's permission I'll submit that to the Court at this time. That narrows it somewhat but it does not cure the problem.

I overheard some counsel for the defendants state that he had not received that. I should clarify it. I delivered that to Mr. Smith this morning at the airport, and therefore it may be possible that distribution has not been made; but I gave it to Mr. Smith [Tr. 34] this morning.

On Page A-6 and A-7 of the Defendants' Objections to Plaintiff's Evidence, all of the portions of the depositions

indicated there have been eliminated by the Government except Cox's testimony on Page 18, Lines 1 to 9; and that is an example of the kinds of things that have been done.

Now with respect to the portions of the testimony that have not been deleted by the Government, the Government has prepared and has distributed to the defendants, through Mr. Smith in the same manner this morning, a document which it calls "Materiality of Depositions," and with Your Honor's permission I will submit that to the Court at this time, not for filing but for—not for the purpose of formal filing, but for the purpose of discussion here at this pre-trial conference, because the Government proposes to file a formal paper within the next day or so containing the same material.

Now if the Court will notice in this document, "Materiality of Depositions," the Government has listed under 25 topical headings the portions of the depositions that it did not withdraw and the reasons why it is retaining those portions or, in other words, indicating the materiality. Now the Court will note [Tr. 35] that under Items 1, 2 and 3 through 6 on page two, the reference is made to the place in the Defendants' Objections to Plaintiff's Evidence where objection is made to portions of the depositions, the name of the witness, and the portion of the deposition objected to. But on pages three through six of the document that Your Honor has in his hand there are no itemizations of the particular witnesses' testimony and of the reference pages; and that is merely because of time. On Friday we did complete that; in other words, pages three through six are now completed. They do have the specific reference to the specific deposition and the specific page numbers. The stencil was run on Friday and Mr. Smith received a carbon copy of that stencil this morning, so that meant there was only one copy for all eighteen defendants. I left instructions with my secretary today to run that stencil and mail that out today; so that when that is done, the defendants will have in their hands the same document that Your Honor has but with pages three through six completed as they were completed on pages one and two.

The Court: Now let me ask you a question right there. Do I understand that your deletions which you have just filed, with the paper which you propose to file early next

week listing the materiality of [Tr. 36] depositions, will those two papers have reference to all the deposition testimony you have designated?

Mr. Bernstein: Yes, sir. Those will have reference to all of the deposition testimony to which the defendants have made objections. I have not checked it to see whether there are any portions of the depositions the Government designated and the defendants did not object to. But with that, it would be all, yes, sir.

Now inviting the Court's attention to page two, one of the topical headings of materiality is, "To show that when a defendant increased its price to a specific customer it also took action designed to insure that a competitor would make the same increase." Now the parties stipulated that representatives of the companies exchanged this price information; the parties stipulated as to that. But the Government's contention is that it is very important and the only way the Government can prevail in this case is if it shows that this agreement to exchange the information which the Government contends exists was made for the purpose of reducing competition; and therefore you need the testimony of the witness, the company's representative, by deposition who, when he was explaining that he exchanged the information, he gave facts which will [Tr. 37] show that he also took action to make sure that a competitor would make the same increase.

The Government contends that without these detailed statements of the witnesses, the Court would not have the basis for appreciating or understanding the Government's legal arguments. Now the Government's position legally is this: that from the stipulations themselves the Court must find that the purpose of the exchange was to reduce competition because there could be no other conceivable explanation. For a competitor to give another competitor the price that he most recently quoted for a custom-made container, without which the competitor would not have that information, there could be no other purpose than to minimize the amount of the reduction the second competitor would quote or to permit him to quote the same price so that there would not be a competitive advantage.

Now this is pure legal argument; it's pure conception. And the Government contends that when the Court reads the evidence of these witnesses who stated what their pur-

pose was in giving this information, and reads their testimony concerning their relations with other competitors, that they had a general purpose to make their decisions so that each one's pricing conduct would be the same as the others, [Tr. 38] or to reduce the amount of competition that would otherwise develop; that the reading of this evidence will support the plaintiff's conceptual argument that this is the necessary consequence. The witnesses themselves testified to it and this confirms it, so that you don't have to rely on just argument, just logic. You have the economic data, you have the testimony of the witnesses, the factual stuff which will confirm that what you have arrived at logically is correct.

Recently there was a case before the Supreme Court, *United States v. White Motor Company*. The question at issue was whether, if a manufacturer requires a dealer to refrain from selling White Motor products in a territory other than a designated territory, that this was per se a violation of anti-trust laws; and the Supreme Court said: We are not ready to say that this is per se; we have to see the economic stuff, the method of doing business upon which they rely. And so they remanded the case to the court for this purpose. This case was ultimately settled because no evidence was introduced to show the purpose was a competitive purpose, and the case was disposed of.

The point is that here in this case the [Tr. 39] Court should not be obliged to decide this matter based on the bare factual conclusions and the stipulations, but to do it in conjunction with the testimony of the parties who participated; find out what they did, what their motives were, what their reasons were. And this is what the Government contemplated in talking about the stipulations from the beginning. It never contemplated that these stipulations would substitute for any evidence. It contemplated that it was to narrow the scope of the issues between the parties.

In the first set of proposed findings that the Government submitted to the defendants, it submitted a finding that the defendants agreed to furnish each other with price information. Now the purpose of submitting that to the defendants was to ascertain whether there was any real issue concerning it, because the plaintiff has designated portions of the depositions, portions—Item 18, these por-

tions of the depositions will be offered "To show that the defendants agreed to give the 'most recent price' when requested, in exchange for the opportunity of receiving it when they in turn would request it." And that was because numerous officials of the defendants had testified that the reason why they gave that competitor the most recent price was so that they in turn would be able to receive [Tr. 40] it when they wanted it; and the Government contends, therefore, that their testimony that they did it as a quid pro quo for receiving it and they did it over a long period of time, that this evidences a factual conclusion that there was an agreement to do it.

Now the defendants, by failing to agree to that stipulation, indicated to the plaintiff that this was the matter at issue and it had to be evidenced; and it's for that reason that certain portions of the depositions are not being evidenced, to show that there was that agreement.

Furthermore, the portion of the stipulation that Mr. Johnson read to the Court this afternoon concerning the contentions of the parties—and that's in the further stipulation with respect to certain proof on page three, Item (i):

"The plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidence an express agreement to exchange price information nor to restrict competition."

And then it went on with other language. The Government respectfully submits that this indicates that the purpose of the stipulation was not, as the defendants would have you believe, to substitute for any evidence [Tr. 41] in the case or anything else, to substitute for the testimony of the depositions, but its purpose was to narrow the issues, to find out what the contentions of the parties were, and that's why that was put into the stipulation.

[Tr. 44] I think the real point of dispute between the defendants and the Government as to the estoppel on the part of the stipulations, whether or not the Government is estopped from using the stipulations, is that the defendants view the stipulations much upon submitting the case to the

Government on an agreed statement of facts; but that wasn't the intention of the parties here. The intention of the parties, if we will review the pre-trial conferences, at the first pre-trial conference the question of the defendants' discovery came up and the Government said rather than answer elaborate interrogatories, that both parties would hear the evidence of the officials of the defendants at the same time; the Government will then be in a position to submit its proposed findings and ascertain which of these are in dispute. Now that was the whole purpose of it. The defendants were given the opportunity to cross-examine on those depositions [Tr. 45] and they were not required to make their cross examination until ten days after the plaintiff had completed its examination in chief. The defendants chose not to cross-examine, chose not to get any evidence via the deposition route. Then when the plaintiff's proposed stipulations were submitted to the defendants, when the parties were here at a pretrial conference, in July I believe it was, the Government stated to the Court that certain facts had been stipulated and the quid pro quo for that stipulation was if the plaintiff would concede that its case in chief would consist only of the stipulations and the depositions and the documents, and nothing else. Then on one pre-trial conference it was reported to the Court that the stipulation had been agreed upon in substance but hadn't yet been executed because of the number of parties or certain other technical difficulties. And at that time I asked the Court to schedule a date for a time when the Government could come back in case the stipulation process broke down, so that we could consider another procedure; and the Government pointed out to the Court that it would have to consider calling live witnesses.

Now the Government precluded itself from calling live witnesses at this trial. The Government [Tr. 46] did not have to rely on the testimony of the defendants' officials in the depositions. It could have called those officials to testify in its case in chief, but it precluded itself from that because it relied on the fact that the stipulations provided the skeleton, the depositions, the testimony of the officials in the depositions provided the flesh and, therefore, there was no need to call these same officials as witnesses and take up the time of the Court to hear oral testimony.

Now if the Government is precluded from following that procedure, it will be prejudiced, because it has made clear to the Court and to the defendants time and time again that the real issue in this case is whether or not the purpose for the agreement to exchange the information was to reduce competition. If the Government had charged in its complaint that the parties had agreed to exchange price information, period, it would have no case; the complaint would be subject to dismissal. But the charge in the complaint is that they agreed to exchange price information for the purpose of reducing competition, and the Government always believed that it would be a meaningless gesture to offer stipulations of fact concerning purpose, which is intent, goes to the nub of the case, with any [Tr. 47] hopes that they would reach any stipulation of purpose; and so no stipulation was ever offered to the defendants on purpose. While it is true, and the Government reiterates today, that the defendants do get the substance of the plaintiff's case in those proposed findings of fact, they do not get any proposals concerning purpose. But the Government has made clear and it made clear in its memorandum before trial that the portions of the depositions that it did not cite with particularity were being offered to show the purpose.

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[Tr. 1]

January 11, 1967, 10:00 o'clock A.M.

The above-styled case came on for oral arguments before the Honorable Edwin M. Stanley, Presiding Judge, in the United States Courtroom, Federal Building, Greensboro, North Carolina, on the 11th day of January, 1967, commencing at 10:00 o'clock A.M.

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[Tr. 7] Mr. Bernstein: May it please the Court, the Government endorses the statement that the defendants made on page 119 of their brief that this case is really a simple one. There is no major factual dispute; there really is no [Tr. 8] major legal issue in dispute among the defendants and the plaintiff. And, therefore, the argument resolves itself into this simple proposition: The Government contends that the principles of the American Column and Lumber case and the principles of Maple Flooring and all of the legal principles should be applied to the case before the Court at this time. And the defendants say that the other principles in Maple Flooring should be applied to this case. And that is the entire dispute.

Now for that reason the Government is going to confine its argument to pointing out why what appears to be issues between the parties are not really issues or are of a minor nature and should be resolved in the plaintiff's favor. The plaintiff's argument can be summarized as follows: First, there was an understanding among all defendants that each would provide to the other upon request the most recent price which it had quoted or which it had charged to a specific customer as long as the recipient would reciprocally provide the same kind of information to the donor whenever it should be requested. That's the first point.

The second point is that because of the habitual practices and customs of the corrugated container industry and the circumstances under which the defendants in this case conducted their business, when each defendant [Tr. 9] disseminated this information to a competitor or a prospective competitor it was in fact informing that competitor what price it proposed to charge to a specific customer. That's the second point.

The third point is that this information was disseminated

and it was gathered so that a competitor or a prospective competitor could quote that specific customer the same price or, if in the exercise of a recipient's individual judgment the recipient thought it necessary or desirable to reduce the price quoted, the reduced price would be as little as possible or the reduction would be as little as possible. Now that's the third point.

So the Government contends that if the Court agrees with the Government's contention, and there was an agreement to give this information when it was requested in return for receiving it when it was requested, that agreement, if the Court finds that this information was tantamount to informing a competitor or a prospective competitor to what price he proposed to charge in the future to that customer and if the Court finds that the reason this information was disseminated and obtained was so, that a recipient could charge the same price or reduce the price as little as possible if he had to do it, that it is the Government's position that it is illegal per se, it is price-fixing under the Anti-Trust laws, it is an illegal per se violation of the [Tr. 10] Sherman Act for the defendants to agree to disseminate this kind of information to a competitor or a prospective competitor.

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[Tr. 525] *Mr. Bernstein.* The defendants misquote me when they say that it is my position that first you must infer an agreement to exchange information. I say that that is my solid position. There is no direct evidence; you must infer the agreement to exchange information, period.

But that's when I stop. I say that there is direct evidence that the purpose for that information was to charge the same price or to minimize the cut. That is direct evidence; you don't need any inference.

Now possibly I might have been the one that caused this misquotation, for this reason: At the opening, in the trial, I said that the Court could infer an agreement; it would be perfectly permissible for the Court to make that inference on the inference. But the Court doesn't have to do it in this case, because we have direct evidence of it. We have the testimony of the Government's adversaries, hostile witnesses, adverse witnesses, who say that their pur-

pose was to charge the same price or to minimize the cut; that's direct evidence.

Now therefore the Government says that it has established that there is an agreement to furnish information for the purpose and with the effect; because these witnesses also testified that that was the effect of it. The effect of it was to permit them to charge the same price. The effect of it was to permit a cut as little as possible. And [Tr. 326] therefore, if Your Honor recalls, in my initial closing argument, I said that if this had been set forth in a written contract, signed, sealed, and notarized, that "we agree to give information in exchange for reciprocally receiving it at a later time; on condition that you charge the same price or minimize the cut," that it would be a per se violation of the Anti-Trust law.

Now that's what makes the difference between this case and Maple Flooring and the Cement case.

[Tr. 330] The Court: But the defendants here, as I understand it, in their arguments said "Well, that's exactly what we are doing, because we made no—" that you have stipulated that—"we made no different use of information that they obtained from a competitor than we did from a customer." But the customer information sometimes will not be given, and on occasions it was unreliable; and that's the sole reason for the intercompany communication; and that was to verify the truth, if it was given; if not [Tr. 331] given, to do a legitimate thing; and that you agreed that they accomplished exactly the same thing.

This was to prohibit a purchasing agent from overstating his case, or to say "You've got to come lower if you want to get the order."

Mr. Bernstein: Well, that wasn't my intention, Your Honor, when the stipulation was entered into, that the only reason for exchange of information was to verify a price given by fraudulent or unscrupulous purchasing agents.

But it was in the testimony; the testimony in the case was, none of the witnesses—well, some of the witnesses say that, but most of the witnesses, when you read their testimony, say that "the reason we give the information is in order

to get it; and the reason we have to get it is because we want to know what price to charge them." And it's stipulated that they generally charged the same price that they received from their competitor. And others say that "If I want to cut it, if I decide to cut it, this will permit me to cut it as low as possible." Now that's the testimony.

In addition to that—in addition to that—they say that "We want to verify—we want to verify—the accuracy of the purchasing agents information." All right; now that's "in addition."

So when we are dealing in this case before [Tr. 332] Your Honor, we're dealing with those facts. We just can't say that the facts are limited to verifying information.

Now we have to reconcile Cement Manufacturers, Maple Flooring, American Column, and American Linseed, because I say none of them overrule any of the others. And so I would say that Cement Institute carves out an exception to American Column. And that is, where the overriding purpose—or where it can be demonstrated that the purpose is to prevent fraud, fraudulent use of a contract—And that's the only purpose that the Court found. If that's the purpose, then it is permitted.

But the Government submits that if the Court finds in this case—as it should from the direct evidence of the witnesses—that the purpose was to permit the quotation of the same price or to reduce the cut as minimal as possible, if the Court finds that that was the purpose, and if the Court finds that there was an agreement to exchange information, then we have an agreement to exchange information for the purpose and with the effect of stabilizing price information, which takes it out of the Cement Institute case and puts it right into the American Column case.

Now let me answer Your Honor's first question, which was: Did I stipulate myself out of court when I stipulated that they were free to exercise their own judgment as to what price to charge, and they generally did [Tr. 333] the same thing regardless of whether they got it from a customer or a supplier.

Now with respect to that, Your Honor, the defendants make much of the point that the cases hold—the cases we all rely on—that as long as you don't interfere with the freedom to prescribe his price—but there is another side to that coin. Judge Walsh made the point for the Govern-

ment. He said that even though he has a customer, he considers him an adversary. And you have another element to the competition here, because not only do you have competition among suppliers for the customer's business, you also have competition between a single supplier and a single purchasing agent for that particular business. Those two are traders; those two are bargainers.

And so we have another case. Now this case is different from Maple Flooring; it's different from Cement Institute; it's different from American Column, although the principles of American Column apply to it considerably; and the principles of all the cases apply to it. But the difference is that none of the Supreme Court cases have addressed themselves to the proposition of what do you do when there is competition between a buyer and a seller for a custom-made product. In all of those cases, you didn't have a custom-made product; you have things that have price lists that are widely disseminated and so on. In our [Tr. 334] particular case, we have the unusual situation that a single buyer is competing against a single seller.

Now obviously, if groups of buyers combined in concerted action against a single seller or single group of sellers, you have a boycott; you can also have a price fix if they arrange that "we won't buy except at this price." And by the same token, when groups of sellers combine so that this buyer is not permitted free trading or bargaining with a single seller, then it becomes illegal and a concerted action.

So I have not stipulated myself out of court, because the Government substitutes for the commitment that all of the defendants' counsel have insisted that the Court must find, they must find that they are committed to charge the same price or committed to cut just a little bit before they can find an illegal agreement; and they say there is no expressed commitment and no agreement can be inferred. And the Government contends that it substitutes for commitment the self-interest of the supplier in combining co-operatively to their mutual advantage to see that each one in turn when he is dealing with a specific customer is able to get the highest price from that specific customer. And that constitutes the commitment and the agreement in this case.

Now the agreement in this case—I must repeat; I

[Tr. 335] reiterate over and over again; and I don't back away from it—the agreement in this case is to exchange information for the purpose of permitting a recipient to charge the same price and reduce the cut as little as possible. That's the agreement.

I circumlocuted the word "agreement" with the word "understanding," because I didn't want the Court to get the impression that I was arguing that there was a price-fixing agreement in the conventional sense of the word. "We agree that tomorrow we will charge this much," and so on. I wanted the Court to get the impression that I was talking about the concerted action of giving this information for the purpose and with the effect; that concerted action was what I was talking about; I was talking about a gentleman's agreement, an understanding. The word "agreement" generally connotes—and Mr. Milman took great pains to discuss contract; and he says there's no difference between "contract" and "agreement." Well, sure, there's no real difference. But we want to use words that articulate and express our own concepts and express with precision what we mean.

Now generally speaking, when we talk of a contract, we're talking about a legal document, a legal lawful document that one may go into court and enforce. If I sign a contract with a gambler that I will participate in a bookmaking activity, we don't generally call that a contract, [Tr. 336] because normally people don't do that—in their right minds, anyway. We call that concerted action; we call that an understanding; we call that a gentleman's agreement. And that's what we are referring to here in this case.

And so when the plaintiff stipulated that they were free to exercise their own judgment, why then that was they were free to determine on this particular occasion what they were going to do, were they going to charge a higher price and reject the business, the same price and get a part of it; or do something else with it, or cut it just as little as possible to get the business. Now that's the distinction that I make for the Cement Institute.

The Court: Well, tell me about this: The Defendants' Request, which you agreed to, Finding Number 40—

Mr. Bernstein: Which Finding, sir?

The Court: 40. "There is no evidence—" and I assume that when you say "no evidence," you mean circumstantial,

direct, or otherwise—"that any employee of any defendant ever discussed with any employee of any other defendant the desirability of furnishing price information or the fact that price information had been or was being communicated or the frequency of such communication or the requesting or failing to request this information or the method of communicating or the action to be taken or not to be taken with respect to such information."

[Tr. 337] That there was "no evidence"; and I am particularly interested that there was no evidence in this record that there was ever any communication between one employee and another—and all of these defendants, they are all corporations; they only act through their employees—with respect to the action to be taken or not to be taken with respect to such exchange of information.

Mr. Bernstein: That's just with respect to the exchange of information.

The Court: That is all that is complained about here, that they are doing, this exchange of information.

Mr. Bernstein: That's right.

The Court: Now what concerns me more specifically there, you say that you infer—well, you do not say that you infer; you say you find from specific evidence—direct evidence—that there was an agreement—

Mr. Bernstein: No. No, I say—

The Court: An understanding.

Mr. Bernstein: No. I say that there was direct evidence that the purpose of the receipt and giving was to quote the same price or less. I say that you infer the agreement to give the information.

The Court: That's right.

Mr. Bernstein: And therefore, having found first—having found that there was the agreement by inference—and [Tr. 338] then direct evidence that that was the purpose, then the Court can properly find by the preponderance of the evidence that there was an agreement to provide the information for the purpose and with the effect.

Now the Government has stipulated here that there is no evidence—that means testimony, documents, or anything else—of the action to be taken; and this is the Finding proposed by the defendants—

The Court: Well, you agreed to it.

Mr. Bernstein: Yes; yes, certainly. Just as I said yester-

day, Your Honor, I would say that there is no evidence in this case that the defendants monopolized; there is no evidence in this case that they have done anything else. Because the plaintiff hasn't charged—hasn't made the claim that there were conversations as to how this information was to be given or how the information was to be received. The Government doesn't claim that it has evidence—

The Court: I know. But you see, I am interested "There is no evidence as to the action to be taken or not to be taken with respect to the exchange of this information." If I read that correctly, you say you have stipulated—

Mr. Bernstein: Oh, no, Your Honor. Let's get that straight. This is not the stipulation; this is a Proposed Finding. When I read that Proposed Finding, I read it to mean that there is no evidence in this case, there is [Tr. 339] no testimony, there are no documents, as to what they were going to do with this information or were not going to do with this information. I did not intend to mean that there was no direct evidence as to what the purpose of an individual giving information or receiving information was.

The Court: Well, when I say "stipulation," I mean it was an Agreed Finding, which has the effect—

Mr. Bernstein: Well, if that is the case, then I've got to withdraw my agreement to that Finding, if that's the way it's to be interpreted.

The Court: I don't know how it's to be interpreted; I am asking you what sort of interpretation do you put on it. Because, unfortunately, I'm going to have to try to interpret it somehow along with all the balance; and I just happened to read that a few minutes ago and wondered what it meant.

Mr. Bernstein: Well, that's what it meant to me when I agreed to it, Your Honor. If Your Honor recalls, the Government took the position that most of the Findings proposed by the defendants, except those where they are counterparts of what are proposed by the plaintiff, the plaintiff contends should not be found by the Court.

On the other hand, the plaintiff wanted to be in a position to simplify the Court's task to say, "We don't quarrel with the accuracy of this." And the Government does [Tr. 340] not quarrel with the accuracy of Finding 40, if Finding 40 means that there are no witnesses' testimony,

there are no documents in this case which concerns conversations or communications among employees of the defendants concerning for what reason they were going to give information and for what reason it was to be received.

The Court: Well, I had noticed in another place, you said, "no direct evidence," and in another place, "there is no expressed agreement." They wanted you to agree to a finding that at no time was there any agreement or understanding; and you inserted the word "expressed".

Mr. Bernstein: Which one, Your Honor?

The Court: I am looking at 44. That before you would agree to that, you wanted them to insert the word "expressed" and strike out "understanding".

Mr. Bernstein: That's right.

The Court: I saw that. There is another place where you said there is "no direct evidence nor expressed agreement," and over here you say, "there is no evidence"; and you took it you meant there was no evidence, circumstantial or otherwise.

Mr. Bernstein: Oh, I'm sorry. I didn't intend that; I didn't intend that.

[Tr. 348] That is not the Government's position. The Government's position is that there was concerted action to provide this information upon request for the purpose of stabilizing the price or minimizing the cut to any customer for which it was asked, although—although—each Defendant did not ask for it with respect to every customer. There were some occasions when it didn't ask for the information.

So it is the Government's position that no one—no one—can evidence which customers there was a restriction for. And if the Government brought in a parade of ten thousand customers, the only thing that they could testify to, the most that they could testify to, would be that, [Tr. 349] "It was very strange to me that I asked for quotations on a custom-made product and I got the same price from several different competitors. That's strange to me."

But we have stipulated that. We have stipulated that when they got the information, when they had reliable

information as to what price was most recently charged, they charged the same price; and so there is no need to bring those witnesses in to say that. The witnesses would not be able to testify as to the conversation, the telephone conversation, between plant managers; they wouldn't know anything about that. So how could we evidence which customers were restricted?

The Government's position is that this agreement was pervasive. It concerned all of the customers, although there were times when it wasn't used for all of the customers.

Now then, the question becomes, well, how often was it used. But Mr. Johnson said frequency is not in issue here, and it isn't. Because the frequency doesn't really tell us anything. The important thing is, and you cannot help but get this impression reading the testimony, while that may have been done irregularly, at irregular times, it was done regularly. It was done throughout; it was not unusual. It was no uncommon; it was done whenever it was needed. Now when was it needed? It was needed [Tr. 350] (a) when they didn't have the information in their own records, (b) when they chose not to believe the customer, or when they chose to verify it. And by saying they chose to verify it, there's no substitute for fraudulent contract as in the Cement Institute case. Because they may choose not to believe them at a time when he is telling the truth and no fraud is being perpetrated.

Now the other time that they chose not to use it is, as some of the witnesses testified, "If I determined that I was going to cut a price, I would not call my competitor. I would use my own judgment and quote the price, because I would think it was unfair." And it is for that reason that the Plaintiff stipulated that if the officials of the Defendants were called to testify—and that's all we stipulated; we didn't say that that really is the fact—if they were called to testify, they would say that they believed they were free to furnish or not furnish or free to request or not to request. I think it's "free to furnish or not furnish." And that is because they recognize there are certain situations where they may want to cut a price and they may not want to ask a competitor for that information; and by the same token; there may be some situations when one of their competitors might be off the air for a

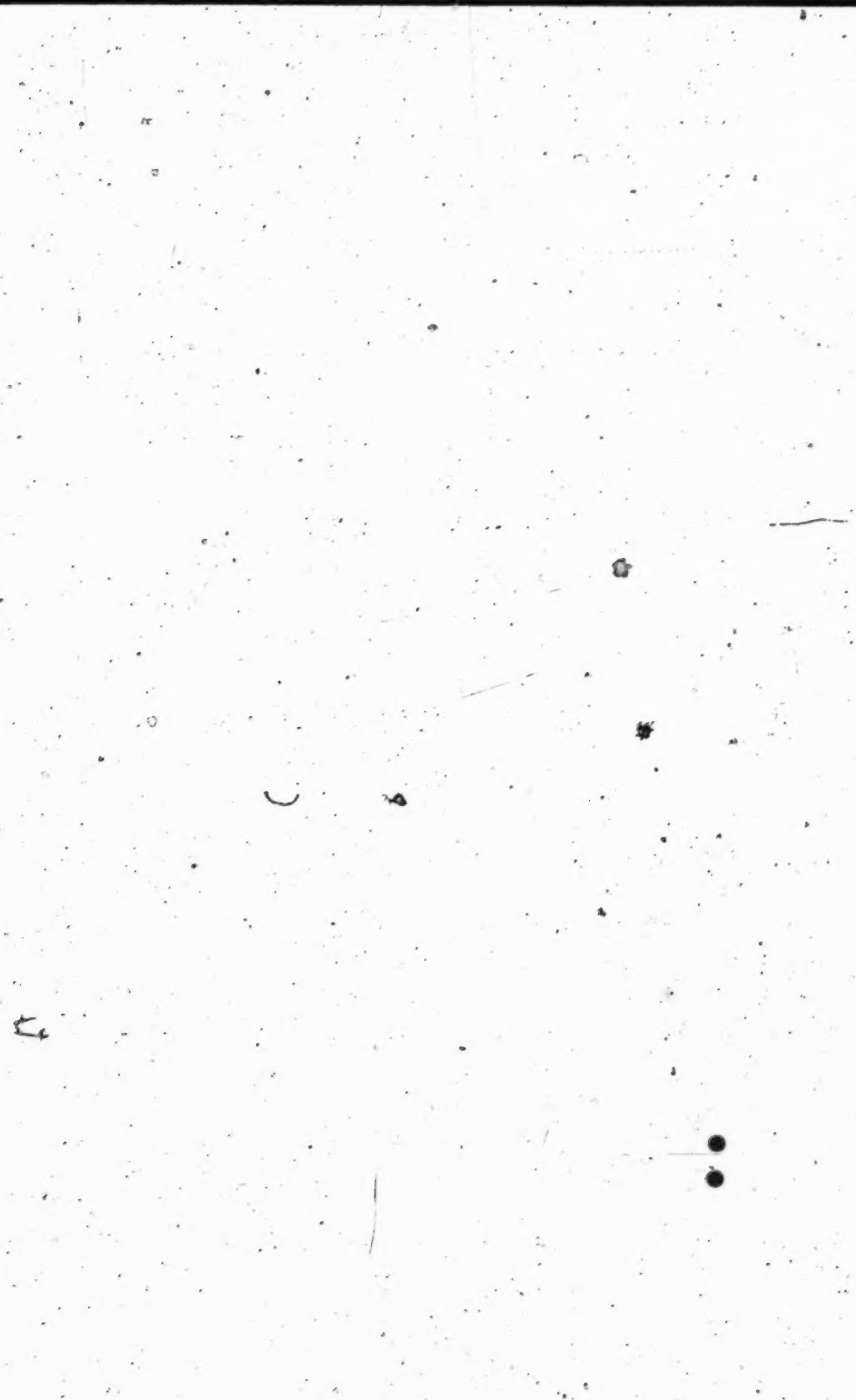
period of time, as it was in this case, when they would not wish to furnish the information to him. [Tr. 351] Then when he goes back on the air, then they would furnish the information.

Now I am sure—I almost hesitate to mention this, but I think it should be made clear for the purposes of the record because the record reads a little differently when you read it several months later or a year later and so on. I am positive that the Court is not going to prejudice the Plaintiff or prejudice any Defendant because they saved six months or more trial by making stipulations rather than bringing witnesses into the Court. And so it's a little unfair to say because the Plaintiff conducted this intensive grand jury investigation and they didn't bring any witnesses in here who would testify to any of those things. The Plaintiff used its best efforts to narrow this question down to the legal question that it stated in its opening argument, which case should be applied, which principle of which case should be applied to this situation. The Government contends that it's the principle in American Column that should be applied to this case, that competitors, rivals, do not act to their disadvantage in giving this information.

Therefore, it is for that reason that the Plaintiff stipulated these many things, because it believed that that would be irrelevant. That isn't the point. That doesn't answer the question. The sole, single, simple [Tr. 352] question is: Was there an agreement to give the information? If the Court finds that, and that has to be done by inference, then the Court can find from direct evidence or by inference, whichever it chooses, or both, but certainly by direct evidence, that it was with the purpose and effect to stabilize the prices. And once the Court makes those findings, then it is illegal per se. American Column holds it. Maple Flooring holds it. Cement Institute holds it. Sugar Institute holds it. It's illegal per se. Socony Vacuum holds it. It becomes a tampering with the price structure.

**DEFENDANTS' PROPOSED FINDINGS OF FACT AND
RESTATEMENT OF CERTAIN FINDINGS OF FACT
PROPOSED BY THE PLAINTIFF**

Dated: May 2, 1966



EXPLANATORY NOTE

The materials contained herein are filed by the defendants pursuant to the Order of the Court dated January 31, 1966.

PART I contains the Findings of Fact proposed by the defendants. The findings contained in Sections I through VIII and X are proposed by all of the defendants and those contained in Section IX are proposed individually by the particular defendant to which the findings relate.

PART II contains a restatement of certain findings proposed by the plaintiff, which the defendants contend are wholly irrelevant to the issues in this case and to which the defendants have objected. Additionally, these findings are contended by the defendants to be inaccurate or incomplete in material respects in the form and language submitted to the defendants by the plaintiff. Each restatement is submitted in order to inform the Court as to accurate and complete statements of the facts relating to the subject matters of such findings, in keeping with what the defendants understand to be the desire of the Court, without regard to the pendency of such objections. In so doing defendants do not waive any such objections.

Defendants have advised the plaintiff that other findings proposed by the plaintiff are objected to on various grounds, and it is expected that these objections will be noted by the plaintiff in its submission of its proposed findings.

PART III contains certain additional findings proposed by the defendants named therein, only in the event that the Court determines that findings are to be made relating to the subject matters covered in the restatements set forth in Part II.

The foregoing were submitted to the plaintiff and the extent of plaintiff's agreement with the form and language of the findings proposed in Part I, the restatements made in Part II and with the findings conditionally proposed in Part III are indicated for each as follows:

1. Where the plaintiff has advised the defendants that the form and language of the finding in its entirety as stated by the defendants are acceptable to the plaintiff, the word "**Agreed**" is set forth next to the finding.

2. Where the plaintiff has advised the defendants that the form and language of the finding as stated by the defendants are not fully acceptable to the plaintiff, but would be acceptable with certain deletions or additions, which deletions or additions are not agreed to by the defendants, the words "**Agreed in Part**" are set forth next to the finding. Such deletions or additions are indicated as follows:

(a) By bracketing to show the additional language requested by the plaintiff which is not agreed to by the defendants; and

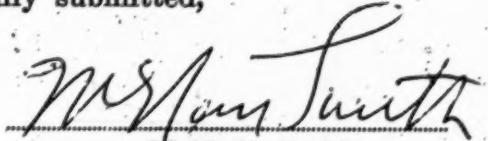
(b) By underscoring to show language which the plaintiff requested be deleted, when such deletion is not agreed to by the defendants.

3. Where the plaintiff has advised the defendants that the finding in its entirety or in its basic substance is not acceptable to the plaintiff, the words "**Not Agreed**" are set forth next to the finding.

The citations contained herein were given to the plaintiff to assist him and were not intended to be exhaustive.

It was agreed by all defendants that these proposed findings and restatements be signed for them by the undersigned in order to avoid the mechanical problems of circulating the document for signatures.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "McNeill Smith", written over a horizontal line.

McNeill Smith

For all Defendants

Dated: May 2, 1966

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May 2, 1966

Part I

Defendants' Proposed Findings of Fact

I. Introductory Material

1. This is a civil action upon complaint of the United States of America (plaintiff) filed on October 14, 1963, under 15 U.S.C. § 4 to prevent and restrain an alleged violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. [Complaint ¶ 1] **Agreed**

2. Jurisdiction of the subject matter duly appears and proper venue of the defendants hereto is not contested. [Complaint ¶ 1; Transcript of Initial Pre-Trial Conference of February 25, 1964, p. 10.] **Agreed**

3. The complaint charges that "the defendants have engaged in a combination and conspiracy in unreasonable restraint of * * * interstate trade and commerce in corrugated containers, in the Southeastern United States; in violation of Section 1 of the Sherman Act"; that the "afore-said combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants to exchange among themselves information respecting prices that they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers"; that for "the purpose of effectuating the aforesaid combination and conspiracy the defendants have done those things which as hereinbefore charged they combined and conspired to do"; and that the "combination and conspiracy has had the effect, among others, of unreasonably restricting price competition in the sale of corrugated" **Agreed**

containers to purchasers located in the Southeastern United States."* [Complaint ¶¶ 10-13].

Agreed

4. Defendants' answers deny in all material respects the aforesaid allegations of the complaint.

Not

Agreed

5. Defenses are raised by the answers based on the provisions contained in a consent decree approved and entered on April 23, 1940, by the United States District Court for the Southern District of New York in the action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" (Civil Action No. 8-318). See Findings 45 through 50, *infra*.

Agreed

6. Attorneys for the plaintiff and for all of the defendants, acting in conjunction with this Court, streamlined both discovery procedures and the presentation of evidence at the trial of this case, without restricting either party from obtaining or presenting any evidence believed to be necessary. In the final stipulation controlling the trial of the case, plaintiff and the defendants stipulated as follows:

"The plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidence an express agreement to exchange price information or to restrict competition. However, the plaintiff contends that from the facts contained in such record the Court may infer an agreement to exchange information as to the most recent quoted price for corrugated containers and that from such agreement, together with such facts,

Not

Agreed

* There is no allegation or charge that the defendants, or any of them, have engaged in any combination, conspiracy, or concert of action or have entered into or at any time been a party to any agreement or understanding with respect to prices generally, or with respect to the prices any one or more of them charged, contracted to charge, or quoted specific customers for corrugated containers, or with respect to any increase, decrease or other change by any one or more of them in prices for corrugated containers, or with respect to any element of such prices.

the Court may infer an agreement to restrict competition. The defendants deny that there was any agreement to exchange price information or to restrict competition and contend that no such agreement or agreements can be inferred." [¶ (i) DX-1]

7. For purposes of brevity, the defendants are referred to herein by the following abbreviated names: Agreed

Container Corporation of

America Container Corporation

Albemarle Paper Manufacturing

Company Albemarle

Carolina Container Company Carolina

Continental Can Company, Inc. ... Continental

Crown Zellerbach Corporation Crown Zellerbach

Dixie Container Corporation Dixie

Dixie Container Corporation

of North Carolina Dixie of North Carolina

Inland Container Corporation ;... Inland

International Paper Company International

The Mead Corporation Mead

Miller Container Corporation Miller

Owens-Illinois Glass Company Owens-Illinois

St. Joe Paper Company St. Joe

St. Regis Paper Company St. Regis

Tri-State Container Corporation .. Tri-State

Union Bag-Camp Paper

Corporation Union-Camp

West Virginia Pulp and

Paper Company West Virginia

Weyerhaeuser Company Weyerhaeuser

Agreed

8. Except as otherwise stated or required by context, the facts set forth in each of the following Findings occurred or existed within the period from January 1, 1955 to October 14, 1963 (hereinafter referred to as the "period covered by the complaint") and within and are limited to the South-eastern United States (herein defined as the states of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee and Kentucky).

Agreed

9. Each defendant engaged in the manufacturing and selling of corrugated containers in the regular course of its business except that the following defendants were not engaged in the corrugated container business in the South-eastern United States prior to the date set forth opposite their respective names:

Albemarle	September 9, 1959
Continental	October 26, 1956
Crown Zellerbach	November 30, 1955
Dixie of North Carolina	March 1, 1959
Mead	December 27, 1956
Owens-Illinois	October 4, 1956
St. Regis	October 2, 1958
West Virginia	September 30, 1957 (except through its subsidiary Hinde & Dauch)
Weyerhaeuser	May 1, 1957

[¶¶ 3, 4 Ex. I PX-1]

Agreed

10. Most of the corrugated containers sold by each of the defendants in the regular course of its business were

manufactured by it upon customer order and in accordance with the specifications prepared by or for the particular customer so ordering as to the style, dimensions, weight, strength, color, printing, type of joint, and other physical characteristics, and, unless otherwise expressly designated, whenever corrugated containers are referred to herein they are of the character described in this Finding. [¶ 8 Ex. I PX-1]

11. The basic material used in the manufacture of corrugated containers is corrugated containerboard consisting of one or more sheets of a corrugated material sandwiched between two or more sheets of linerboard. [¶ 38 Ex. I PX-1] **Agreed**

12. Each defendant, in the regular course of its business, has sold and shipped substantial quantities of corrugated containers to customers located in states other than the states in which said corrugated containers were manufactured. [¶ 5 Ex. I PX-1] **Agreed**

II. The Industry

A. Size and Growth

Agreed 13. Aggregate dollar sales of corrugated containers for all defendants for each year since and including 1961 were in excess of \$100 million per year. At the time of the filing of the complaint herein, the aggregate shipments of corrugated containers of all defendants from plants in the Southeastern United States represented approximately ninety per cent (90%) of total shipments of corrugated containers from all plants in the Southeastern United States. [¶¶ 6-7 Ex. I PX-1; ¶ 1 PX-2]

Agreed 14. During the period covered by the complaint there has been growth and expansion of the corrugated container industry in the Southeastern United States. From an industry comprised in 1955 of 30 manufacturers having a total of 49 corrugated container manufacturing plants it has grown to an industry comprised in 1963 of 51 manufacturers having a total of 98 such plants. In January 1955, the beginning of the period covered by the complaint, 9 of the 18 defendants and 21 non-defendants were engaged in the corrugated container business in the Southeastern United States. In 1963, the end of the period covered by the complaint, there were a total of 18 defendant and 33 non-defendant corrugated container manufacturers in the Southeastern United States. During the same period shipments of corrugated containers from plants located in the Southeastern United States increased from slightly over 9 billion square feet in 1955 to almost 16 billion square feet in 1963. This growth and expansion is illustrated by the following statistics showing the number of such plants in the South-

eastern United States and the volume of shipments therefrom:

<u>Year</u>	<u>Number of Plants</u>			<u>Shipments of Corrugated Containers (Millions of Sq. Ft.)</u>
	<u>Total</u>	<u>Defendants</u>	<u>Others</u>	
1955	49	18	31	9,077
1956	56	21	35	9,659
1957	59	30	29	10,026
1958	67	36	31	10,400
1959	71	43	28	12,328
1960	76	46	30	12,266
1961	81	53	28	13,481
1962	85	55	30	14,831
1963	98	58	40	15,846

[¶ 1 Ex. I DX-1]

15. In 1963 there were more than 10,000 purchasers of corrugated containers in the Southeastern United States and, in addition, several thousand potential purchasers of such containers. In that year the defendants employed in the aggregate more than 411 sales personnel to sell their corrugated containers who in the course of their sales activity in behalf of their respective companies each business day made on the average 4 or 5 calls each on purchasers or potential purchasers. In October 1963 the defendants had the following number of sales personnel regularly soliciting corrugated container business in the Southeastern United States: Agreed

<u>Company</u>	<u>Number</u>	<u>Company</u>	<u>Number</u>
Container Corporation	57	Mead	26
Albemarle	9	Miller	7
Carolina	15	Owens-Illinois	59
Continental	20	St. Joe	12
Crown Zellerbach	27	St. Regis	23
Dixie	12	Tri-State	5
Dixie of North Carolina	3	Union-Camp	36
Inland	24	West Virginia	17
International	23	Weyerhaeuser	36

[¶ 15 Ex. I DX-1]

B. Factors of Supply and Demand

Agreed 16. Throughout the period covered by the complaint there has been an ample supply of raw materials available from competitors and from others for manufacturing corrugated containers. Necessary machinery and equipment has been available from numerous suppliers. Initial investment for a corrugated container manufacturing facility is relatively low, approximating as little as \$50,000 to \$75,000 for a minimum size viable enterprise. [¶ 2 Ex. I DX-1]

Agreed 17. The capacity to supply all purchasers of corrugated containers in the Southeastern United States has exceeded in each of the years from 1955 through 1963 the demand of such purchasers for such containers. [¶ 3 Ex. I DX-1]

Agreed 18. The costs of manufacturing corrugated containers vary from plant to plant, and for each plant manufacturing corrugated containers unit costs vary with the ratio between that plant's production and capacity. Generally, each order which increases a plant's ratio of production to its

capacity represents an increasing profit or diminishing loss for it. Each plant attempts to obtain orders to enable it to operate at all times at as favorable a ratio of production to its capacity as possible. [¶ 6 Ex. I DX-1]

19. The demand for corrugated containers is determined by the volume of sales of the wide variety of disparate products manufactured and sold by the many thousands of purchasers of corrugated containers. Purchasers do not buy corrugated containers except as they need them for shipping their products, and do not build up inventories of such containers. Purchasers of corrugated containers do not enter into long term commitments for their requirements. Purchasing is done generally on a spot or short term basis covering a purchaser's immediate or near term requirements. [¶ 4 Ex. I DX-1] Agreed

20. During the period covered by the complaint the trend of corrugated container prices was downward and while containerboard prices fluctuated during the period, they were substantially the same at the end of said period as at the beginning thereof, in contrast to the increase in prices during the same period for paper and allied products generally and for all other commodities excluding farm and food. During the same period labor rates, machinery and equipment costs, and other production costs for both corrugated containers and containerboard increased. [¶ 7 Ex. I DX-1] Agreed

21. Throughout the period covered by the complaint, prices for corrugated containers have been responsive to the forces of supply and demand. [¶¶ 3, 7 Ex. I DX-1; CX-6, pp. 604-605; DX-32, 131, 133, 135, 136, 137, 138, 139, 142, 143, 144, 148, 149, 152, 153, 155, 183, 205, 206, 208, 279, 309, 318, 322, 336, 387, 418, 464, 467, 504, 507, 528] Not
Agreed

III. Nature and Extent of Competition and Effect of Price Communication

Agreed
in Part*

22. Throughout the period covered by the complaint, the corrugated container industry was and is highly competitive and each defendant engaged in and was faced with price competition in the sale of corrugated containers, and the parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would so testify. [¶ 17 Ex. I DX-1; DX-7 through 1042]

Agreed

23. Throughout the period covered by the complaint every purchaser of corrugated containers has had numerous alternate sources of supply, both actual and potential. Such purchasers are free to shift all or a part of their business from one supplier to another, and they frequently do so. Although such purchasers generally do not make such shifts unless offered a lower price by another supplier, each defendant repeatedly loses customers and obtains new ones and continuously has substantial losses and gains in its sales to particular customers. Tables 1 and 2 annexed to DX-1 and the Charts on pages 21 through 24 of DX-6 reflect business lost and gained from one year to the next for the period 1960-1962. The figures shown in said Tables and Charts are representative for each defendant of the entire period covered by the complaint. [¶ 5 Ex. I DX-1]

Agreed

24. The following examples from Tables and Charts referred to in Finding 23 are typical of the extent of gains

* As stated in the Explanatory Note above, the material underscored in this and other Findings shows language which the plaintiff requested be deleted, when such deletion is not agreed to by the defendants.

and losses in customers and in sales to particular customers experienced by each of the defendants throughout the period covered by the complaint.

A. In 1960 Container Corporation's plants in the Southeastern United States made sales of corrugated containers to a total of 3,132 accounts. Of these 1,209 accounts, representing over 38% of all of the accounts sold by Container Corporation during that year, were new accounts; i.e., accounts which had bought nothing from any of Container Corporation's plants in the Southeastern United States during the preceding year. In addition, Container Corporation's sales during that year to another 488 of those accounts, representing over 15% of the total, amounted to more than 150% of its preceding year's sales to each of such accounts. Moreover, of the 3,132 accounts sold in 1960 a total of 1,210 (over 38%) were totally lost by Container Corporation in 1961, and its sales in 1961 to another 343 of these accounts (over 19% thereof) were less than 50% of its preceding year's sales to each of such accounts. Not only was a large percentage of Container Corporation's total Southeastern United States accounts involved in such gains and losses but the dollar volume of its sales to such accounts was also very substantial, accounting for over \$14,300,000 out of total sales of about \$29,400,000, or more than 48% of Container Corporation's total corrugated container sales from plants in the Southeastern United States.

Agreed

B. In 1960 Albemarle's plant at Richmond, Virginia, sold a total of 291 accounts. Of these, 92 (over 31%) were new accounts. Albemarle's sales in 1960 to another 49 accounts (over 16% of Albemarle's total accounts) amounted to over 150% of its preceding year's sales to each of such accounts. Of the 291 accounts sold by Albemarle in 1960, 96 (approximately 33%) were totally lost by it in 1961, and its

Agreed

1961 sales to another 50 of these accounts (over 17%) were less than 50% of its preceding year's sales to each of such accounts. The dollar volume of Albemarle's 1960 sales to the accounts involved in such gains and losses amounted to almost \$1,200,000, or more than 67% of its total 1960 corrugated container sales of less than \$1,800,000.

Agreed

C. In 1960 Owens-Illinois' plants at Atlanta, Georgia, Jacksonville, Florida, Miami, Florida, and Salisbury, North Carolina, sold a total of 2,527 accounts. Of these, 908 (over 35%) were new accounts. Owens-Illinois' 1960 sales to another 381 accounts (over 15% of total 1960 accounts) exceeded 150% of its preceding year's sales to each of such accounts. Of the 2,527 accounts sold in 1960, 941 (over 37%) were lost by Owens-Illinois in 1961; and its 1961 sales to another 268 of these accounts (over 10%) decreased to less than 50% of its 1960 sales to each of such accounts. The dollar volume of Owens-Illinois' 1960 sales to the accounts involved in such gains and losses amounted to almost \$8,900,000, or more than 62% of its total 1960 corrugated sales from the above plants of less than \$14,300,000.

Agreed
in Part

25. The record includes over 1,000 documents from the defendants' files. These documents are contemporaneous business records most of which relate to specific purchasers prepared by employees directly engaged in the sale of corrugated containers. They provide a detailed portrayal of independent and unrestricted price competition by each of the defendants. These documents constitute a sampling from the defendants' files. This sampling relates to hundreds of purchasers of corrugated containers and to thousands of transactions with such purchasers. [DX-7 through 1042] Among other things, these documents establish that during the period covered by the complaint:

(a) In order for a supplier or prospective supplier to compete effectively for the business of a purchaser, there is a vital need for information as to the price alternatives available to that purchaser. **Agreed**

(b) Purchasers [have] usually and voluntarily informed suppliers and prospective suppliers as to prices most recently charged or quoted by competing suppliers and identified the particular supplier or suppliers charging or quoting such prices. **Agreed in Part***

(c) Purchasers [have] frequently informed suppliers and prospective suppliers as to the particular prices which must be met or beat in order to obtain or retain business. **Agreed in Part**

(d) Upon obtaining such price information, suppliers and prospective suppliers [have] frequently reduced their prices. **Agreed in Part**

(e) Absent such price information, a supplier or prospective supplier [has] frequently quoted prices higher than those most recently charged or quoted by other suppliers. **Agreed in Part**

(f) Each defendant frequently encountered situations in which the prices most recently charged or quoted by it were cut by other defendants and responded to such price cutting by meeting or beating the prices quoted by such other defendants. **Agreed in Part**

(g) Each of the defendants endeavored to obtain additional sales by cutting the prices which other defendants had most recently charged or quoted to their customers or prospective customers. **Agreed**

* As stated in the Explanatory Note above, the material in brackets in this and other Findings show additional language requested by the plaintiff which is not agreed to by the defendants.

Agreed
in Part

26. Plaintiff was furnished listings showing the name and address of every corrugated container customer in the Southeastern United States of each of the defendants, aggregating more than 10,000 such customers. No evidence was adduced by plaintiff from any of such customers showing or in any way indicating that the prices charged by any one or more of the defendants were stabilized or harmonized by the requesting or furnishing of price information by or between any of the defendants, or showing or in any way indicating that the prices charged or quoted such customers were any higher than they would have been had there not been any such requesting or furnishing of price information, or showing or in any way indicating any uniformity or parallelism of prices between or among any two or more of the defendants.

Agreed
in Part

27. The record contains statistics, together with graphical presentations prepared therefrom, showing for the entire period covered by the complaint the four-week price trend of each plant of each defendant except Albemarle, Miller and St. Joe, as well as the average monthly prices of St. Joe. These statistics demonstrate the absence of any uniformity, harmony, stability, or parallelism in prices either as among the several defendants or among the plants of individual defendants. The price trends varied widely among the plants of the several defendants both as to direction and as to degree. At the same time as the price trends of some plants moved upward, those of other plants moved downward, and when two or more moved in the same direction, the amount of movement differed substantially.
[DX-5; DX-6, pp. 2-20, 25-46]

IV. How Prices Are Determined

28. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, each defendant exercises its own business judgment. Many factors influence the decision, including, among others, the following:

Agreed

- (i) estimates prepared from its internal manual;
- (ii) current plant production load or existence of idle time in its plant, a condition which varies widely in each plant from week to week, season to season, and with the rise and fall of business activity of its customers;
- (iii) suitability of the equipment in its plant for the production of the particular container and the expense of obtaining new equipment when necessary;
- (iv) availability of any special materials needed to produce the order;
- (v) desirability of adding the particular order to the then scheduled plant production mix and the ability to do so, which varies continuously in the operation of the plant;
- (vi) convenience of customer's plant location for servicing and cost of delivery;
- (vii) size of the order, e.g., carload or less than carload shipment, and customer's prescribed delivery schedule;
- (viii) customer's credit rating;
- (ix) growth prospects of the account and the possibility of substantial future orders;

* See Findings 51, 57, 63, and 64.

(x) the experimental or developmental character of the particular container and the need to gain manufacturing and marketing experience with respect to it;

(xi) amount of customer's business represented by the order;

(xii) general market conditions in the Southeastern United States and in the corrugated container industry particularly;

(xiii) prices of its recent sales of the same or other corrugated containers to that customer;

(xiv) customer loyalty;

(xv) effect of the order on its costs and profits; and

(xvi) prices believed to have been most recently charged or quoted by competitors, when such defendant believes it has sufficient basis for such belief.

[¶ 14 Ex. I DX-1]

Agreed

29. A defendant regularly supplying a customer with corrugated containers, when pricing an order from that customer for additional corrugated containers of the same or different specifications, would usually price such additional containers on the same basis used by it in pricing that customer's last previous order. The foregoing was subject to change when (1) there had been a change in any of the competitive or other market factors or conditions; (2) the specifications and volume requirements were not substantially the same; or (3) there had been a change in raw material costs or other significant costs. [¶ 54 Ex. I PX-1]

Agreed

30. Most purchasers of corrugated containers generally purchase their containers from two or more of the defendants concurrently. [¶ 10 Ex. I PX-1]

31. Prices which purchasers of corrugated containers will pay are determined on the basis of price alternatives available to them from existing and prospective suppliers. It is necessary for each supplier to meet or be below competition in order to retain its customers, and to meet or be below the prices and other terms offered by competitors in order to obtain new customers or additional business from existing customers. [¶ 12 Ex. I DX-1]

Agreed

32. The defendants, in selling corrugated containers, deal with buyers who have knowledge of prices which have been and are being offered by competing suppliers of corrugated containers. [¶ 11 Ex. I DX-1]

Agreed

33. Before determining the price to be quoted to a specific purchaser for a corrugated container, each defendant was interested in all pertinent marketing information applicable to such account. Among other things, each defendant considered the price which that purchaser had most recently been charged or quoted for corrugated containers to be pertinent marketing information and considered it beneficial to have such information. [¶ 11 Ex. I PX-1]

Agreed

34. All corrugated containers made to particular specifications were substantially identical regardless of which manufacturer produced them, and purchasers of corrugated containers were able to and did shift from one supplier to another on the basis of price. With minor exceptions, therefore, no manufacturer of such containers was able to obtain a higher price for such containers than the price at which another manufacturer had sold or offered to sell like containers to such purchaser, and it was important to each manufacturer to have accurate information as to the price alternatives available to such purchaser. Moreover, some

Agreed

purchasers did not accept the offer of the manufacturer making the lowest initial quotation, but afforded other manufacturers an opportunity to meet such lower quotation, and if met, such purchasers often divided their purchases among some or all of the low-quoting manufacturers. In consequence, when a defendant obtained what it considered reliable information as to the most recent price to a specific customer for a specific corrugated container, in the majority of instances it quoted or charged substantially the same price irrespective of whether the source of its information had been the purchaser or another supplier. In many instances, however, depending upon particular circumstances, each defendant quoted lower or higher prices, and in all instances the determination as to the price to be charged or quoted was its individual decision. [¶ 70 Ex. I'PX-1]

V. Obtaining Price Information

35. Possible sources for obtaining the most recent price* to a specific customer for corrugated containers included the defendant's own records of prior sales, the particular purchaser involved, or one of his present or former corrugated container suppliers. Usually such information was obtained from the defendant's own records of prior sales or from the particular purchaser involved. [¶ 13 Ex. I PX-1]

Agreed

36. On occasions buyers furnish suppliers with incomplete, inaccurate, or misleading information as to prices offered by competing suppliers. [¶ 11 Ex. I DX-1]

Agreed

37. No defendant furnished any competitor most recent price information except in response to a specific request therefor. [CX-4, p. 159; CX-5, pp. 277, 315, 343; CX-6, pp. 451, 535-536, 566, 587; CX-7, p. 633]

Agreed

38. The extent and frequency with which most recent price information was requested or furnished varied among the several defendants and among the plants and customers of the individual defendants. [¶ 31 Ex. I PX-1]

Agreed

39. There was no evidence of express assurance that any defendant who furnished such price information upon re-

Agreed

* As used herein the words "most recent price" mean either the most recent price charged a specific customer in an actual sale or the price most recently quoted. In most instances when a defendant requested or furnished another defendant information as to its price to a specific customer, such information related to a price charged the customer in an actual sale, but on occasion some of the defendants requested and/or furnished information as to prices quoted upon which an actual order had not at that time been received from the customer. [¶¶ 12 and 34 Ex. I PX-1]

Agreed

quest of another defendant would be able to obtain price information from such other defendant. [¶ 19 Ex. I PX-1; CX-5, p. 224; CX-7, pp. 651, 721, 727]

Agreed

40. There is no evidence that any employee of any defendant ever discussed with any employee of any other defendant the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information.

Agreed

41. The parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would testify that he considered that he could (with the exceptions noted in Findings A-5, H-14, L-5, and O-2) request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Not
Agreed

42. When price information was requested of a defendant by a competitor, such defendant's decision whether or not to furnish such information was not affected by any price or price level which such competitor had previously charged or quoted or which such competitor might thereafter charge or quote. [¶¶ 19-23, 70 Ex. I PX-1; ¶ 17 Ex. I DX-1; CX-4, p. 122; CX-5, pp. 282-287; CX-6, pp. 604-608]

Agreed
in Part

43. Throughout the period covered by the complaint, each defendant [at some time] felt free to cut a most recent price received from a competitor, and after receiving a most

recent price from another defendant frequently charged or quoted prices lower than those received. [¶70 Ex. I PX-1; CX-4; pp. 123-124, 147-148; CX-5, pp. 282-288, 298-300, 311-312, 343-344; CX-6, pp. 593-594, 596-597, 604-608; CX-7, pp. 689, 693, 713-714]

44. No defendant at any time had any [express] agreement or understanding with or was under any obligation to any other defendant with respect to any price or prices to be charged or quoted for corrugated containers, irrespective of whether or not such defendant had requested from or furnished to the other any price information. [¶70 Ex. I PX-1; ¶¶ 14, 17 Ex. I DX-1; DX-7 through 1042; CX-4, pp. 123-124, 147-148; CX-5, pp. 282-288, 298-300, 311-312, 343-344; CX-6, pp. 593-594, 596-597, 604-608; CX-7, pp. 689, 693, 713-714]

Agreed
in Part

VI. The 1940 Consent Decree

Agreed 45. On April 23, 1940, a consent decree was entered in an action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" in the United States District Court for the Southern District of New York (Civil Action No. 8-318). [¶ 18 Ex. I DX-1]

Agreed 46. Container Corporation and Inland were among the defendants in the aforementioned action. In addition, the following corporations were among the defendants in such action:

Robert Gair Company, Inc., which was subsequently merged into Continental;

Gaylord Container Corporation, which was subsequently merged into Crown Zellerbach;

The Hinde & Dauch Paper Company, which was subsequently merged into West Virginia;

The Jackson Box Company, which was subsequently merged into Mead;

F. J. Kress Box Company, Niagara Corrugated Container Co., Inc. and Superior Paper Products Co., which were subsequently merged into St. Regis;

National Container Corporation, which was subsequently merged into Owens-Illinois; and

Eddy Paper Corporation and Kieckhefer Container Corporation, which were subsequently merged into Weyerhaeuser.

[¶ 20 Ex. I DX-1]

47. On April 20, 1940, in presenting the consent decree for the approval of the District Court in the above-entitled action, counsel for the Government stated in open court: Agreed

"The Government regards this decree as fully complying with the Departmental policy. We think it is a well drafted document, which fully satisfies the Department's policy, in that it presents a constructive program which is designed to insure, not only that the violations complained of will cease, but also that such steps will be taken by the industry as will redound to the general public welfare."

[¶ 21 Ex. I DX-1]

48. A *nolle prosequi* was signed in the companion criminal action (No. C-105-445) on April 23, 1940, and entered April 24, 1940. In its *nolle prosequi*, the Government stated: Agreed

"1. That it is the publicly announced policy of the Department of Justice to recommend that indictments under the Antitrust Laws be nolle prossed in the event that defendants voluntarily submit a program, embodied in a consent decree, which goes beyond anything that might be achieved by successful criminal prosecution and which binds them to a course of conduct deemed to be in the public interest in preventing the causes of illegal restraints of trade and in promoting free competition in an orderly market;

"3. That the National Container Association and the corporate defendants hereinafter named, and The Stevenson Corporation have agreed to the entry of a consent decree, Civil No. 8-318, which embodies substantially the requirements in such matters set out in Paragraph 1 above;

"4. That such consent decree has been tendered by defendants voluntarily and in good faith;

"5. That in the opinion of the Department of Justice; the nolle prossing of this case as to the defendants hereinafter named is justified pursuant to the policy stated in Paragraph 1 above; * * *

[¶ 22 Ex. I DX-1]

Agreed

49. The consent decree was widely publicized, both when it was entered and in the years subsequent thereto, in the corrugated container industry, and each of the defendants in the instant case has been cognizant of the existence of the decree and of the terms thereof and has relied thereon.
[¶ 23 Ex. I DX-1]

Agreed

50. The consent decree provides in part as follows:

"3. Nothing contained in this decree limits the right of said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them, or any of them, to do, or to cooperate in doing; any act, or to engage in any practice, not enjoined by this decree, including but not limited to the following:

"(a) gathering, auditing, and disseminating information as to the cost of manufacture of corrugated and solid fibre containers, the volume of production and shipment, the actual price (or base price derived from actual price) which the product has brought in past transactions, stocks of merchandise and materials on hand, approximate cost of transportation, and any other facts pertaining to the condition or operation of the industry, and meeting to discuss such information and statistics without, however, reaching or attempting to reach any agreement or any concerted action with respect to prices or production of such containers;
* * *

"4. Nothing contained in this decree limits the right of a defendant to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors."

VII. Manuals and Internal Manuals

51. Most of the defendants prepared manuals for their own internal use containing formulae and schedules of costs and/or charges from the application of which their respective approximate manufacturing costs and/or price estimates could be computed for most corrugated containers manufactured by them. Such manuals contained schedules of costs and/or charges for corrugated container board of various weights, strengths and wall constructions stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. Such manuals also contained various costs and/or charges relating to the actual manufacture of corrugated containers. Such manuals also contained schedules of costs and/or charges, commonly called set-up charges, for the setting up of the necessary machinery for the production of corrugated containers of various specifications. Various of such manuals have been revised from time to time to reflect changes in costs, products, materials, designs and market conditions. These manuals were variously referred to by the companies which prepared them, among other things, as "cost manuals," "pricing manuals," "pricing procedures" or "estimating manuals." Whenever these manuals are hereinafter referred to, they are specifically described as "internal manuals." [¶ 35 Ex. I PX-1] Agreed

52. At various times, manuals containing formulae and schedules of charges from the application of which a price estimate could be computed for most containers manufactured by them were prepared by each of the following: National Container Corporation, The Old Dominion Box Company, Inc., Crown Zellerbach (Gaylord Container Divi- Agreed

sion) and Inland. Each of said manuals was made available to other manufacturers of and customers for corrugated containers. Except as otherwise stated, as used hereafter the word "manual" means one of the manuals referred to in this Finding. [¶ 36 Ex. I PX-1]

Agreed 53. The manuals were variously referred to in the trade, among other things, as "price lists," "estimating and pricing manuals" or "estimating manuals." [¶ 37 Ex. I PX-1]

Agreed 54. Each of the manuals contained a schedule of charges for corrugated container board of various weights, strengths and wall constructions for use in computing corrugated container prices according to the particular manual employed. These charges are stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. In the trade these charges were variously called, among other things, an "area charge," "base," "base price," "board base price," "board factor," "multiplier," "level" and "board level." [¶¶ 39-40 Ex. I PX-1]

Agreed 55. The manuals also contained various charges relating to the actual manufacture of corrugated containers. Before the actual manufacturing process can begin, it is necessary to set up the production machinery to accommodate the particular specification, such as style, dimensions; printing, kind of joint, etc., for each individual order and type of corrugated container. The manuals also contained a schedule of charges commonly called "set-up charges" to cover the cost of the setting up of the necessary machinery for the production of corrugated containers of various specifications. [¶¶ 42-44 Ex. I PX-1]

56. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant took into account the price currently or most recently charged by it to that purchaser for the same or similar corrugated containers, the price alternatives available to the purchaser, its estimated manufacturing costs and profitability and desirability of such business. In this connection, each of the defendants has used one or more of the manuals to compute price estimates on a substantial number of occasions in one or more of the following ways:

(1) By application of the formulae and schedules of charges set forth therein;

(2) By application of the formulae and schedules of charges set forth therein, but employing a board level different from that stated therein;

(3) By application of the formulae and schedules of charges set forth therein, but employing a set-up charge different from that stated therein;

(4) By application of the formulae and schedules of charges set forth therein, but employing other charges different from those stated therein;

(5) By any combination of the applications referred to in subparagraphs (2), (3) and (4) hereof;
or

(6) By any of the applications hereinabove set forth, but then applying a discount to the result.

The extent of such use varied among the several defendants, and among the plants and customers of individual defendants. [¶ 47 Ex. I PX-1]

57. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, Agreed

each defendant having an internal manual or internal manuals has used such internal manuals in approximately the same ways and under the circumstances described in Finding 56, and often along with one or more of the manuals referred to in Finding 56. The extent of such use varied among the several defendants, and among the plants and customers of individual defendants. [¶ 48 Ex. I PX-1]

Agreed 58. If the same board level and set-up charge were used in computing a "manual" price for a corrugated container of particular specifications there would be in most instances little difference in the results of the computation, regardless of which manual was used in making the computation. [¶ 49 Ex. I PX-1]

Agreed 59. The actual price charged for corrugated containers was usually referred to in the trade as the "end price," which in most instances was different from any manual price referred to in Finding 58. [¶ 50 Ex. I PX-1]

Agreed 60. On those occasions when a defendant furnished to another defendant upon his request the most recent price to a specific customer for corrugated containers such information usually was furnished either in terms of an end price or in terms of a board level. In the case of some defendants such information was furnished only in terms of an end price. [¶ 51 Ex. I PX-1]

Agreed 61. On those occasions when a defendant furnished to another defendant upon his request the most recent price to a specific customer for corrugated containers, end prices usually were furnished when the request involved only a few different container items, and board levels usually were furnished when the request involved more than a few different container items. [¶ 52 Ex. I PX-1]

62. When a customer ordered two or more different corrugated containers, specifying the same test board for all but otherwise involving different specifications, usually the supplier filled said order at prices reflecting for the entire order a constant charge for board. [¶ 53 Ex. I PX-1] Agreed

63. Each defendant having its own "manual" or "internal manual," as those terms are defined in Findings 52 and 51, respectively, prepared the same and any revisions thereof independently and without any agreement or understanding with any other defendant. [¶ 8 Ex. I DX-1] Agreed

64. Price or cost estimates for a particular corrugated container computed under any one of such internal manuals differ from the price or cost estimates for such container computed under internal manuals of other companies. [¶ 9 Ex. I DX-1] Agreed

65. The great majority of sales of each defendant is made at prices less than the prices would have been if computed on any published manual. There is no regular, prevalent or uniform percentage variation from any such computation in common use among any of the defendants, or in use by any individual defendant. Table 3 annexed to DX-1 and the Charts at pages 47 through 68 of DX-6 contain data illustrative of the foregoing for the several defendants for the period covered by the complaint. [¶ 10 Ex. I DX-1; DX-6] Agreed

66. When Crown Zellerbach in 1957 prepared and issued its manual as described in Finding 52 it adopted and for a period of months followed a policy to adhere to said manual. During that period, no employee had authority to quote or charge prices lower than prices computed on the manual and as a result Crown Zellerbach lost a great volume of business. It was compelled to abandon that policy to avoid losing all its business, and by cutting prices regained the business it lost. [CX-7, pp. 704-5] Agreed

VIII. The Fibre Box Association

Agreed 67. The Fibre Box Association, hereinafter called the "Association," was a trade association with a nationwide membership consisting of manufacturers of corrugated and solid fibre containers.

Agreed The Association had geographic divisions and zones. Zone 10 comprised the States of Virginia and North Carolina, and was known as the Piedmont Group. Zone 11 comprised the States of South Carolina, Georgia, Florida, Alabama, and those portions of Tennessee and Kentucky east of the Tennessee River with the exception of Boone, Campbell, Jefferson and Kenton Counties of Kentucky, and was known as the Southeastern Group. Each of the defendants except Albemarle, Miller and St. Joe was a member of the Zone 10, Piedmont Group, and/or the Zone 11, Southeastern Group. [¶¶ 58, 62 Ex. I PX-1]

Agreed 68. The Association employed a statistician who supervised its statistical program as a part of which each member compiled and submitted to the Association a weekly summary showing, in square feet, the quantity of corrugated and solid fibre shipments and the dollar value of these shipments.

Agreed From this data the Association prepared an overall corrugated price trend which was obtained by dividing the total dollars of sales made to the trade by the total footage shipped. These overall corrugated box price trends were compiled and published monthly for each division.

Agreed An analyzed price trend was also prepared by taking the reported sales of a selected variety of the more standard

containers and adjusting the same for the box size and size of run to a common basis. These trend figures were computed for every member of the zones and divisions as well as for each respective zone and division as a unit. These divisions and zone price trends as well as aggregate shipment figures for each member were issued to each member approximately ten days after the close of each week and included comparative price trend figures for the prior 4-week periods, months, quarters and years. However, the individual member price trend figure was given only to that member.

Due to the variety of the materials used and the great variety in construction of the containers as well as differences in the "mix" due to seasonal factors, the indexes referred to above showed only price trends and could not be used for price comparison between competitors nor to ascertain the prices charged for any particular type of containers sold. [¶ 59 Ex. I PX-1] **Agreed**

69. Meetings of members of Zones 10 and 11 were ordinarily held every four weeks with a representative of the Association and Legal Counsel, and at these meetings there was a review of statistics and charts showing substantially the same information referred to in Finding 68. In addition, statistics showing the production of paperboard, containerboard and boxboard were reviewed and compared with an average and with the prior year; and total raw material inventory figures were reported. A discussion of current business conditions for the corrugated container industry was usually included on the program agenda and a discussion of current and expected demand for corrugated containers as indicated by incoming orders was often a part of the meeting. [¶ 60 Ex. I PX-1] **Agreed**

Agreed 70. Individual customer prices were not discussed at Association meetings. On some occasions, before or after said meetings, representatives of some of the defendants attending the meetings furnished most recent price information when requested by a representative of another defendant. [¶ 61 Ex. I PX-1]

Agreed 71. On most occasions during this period, the regular four-week Association meetings of the Piedmont Group and the Southeastern Group were held jointly. [¶ 63 Ex. I PX-1]

IX. Findings as to Specific Defendants**A. Container Corporation**

A-1. In the trade Container Corporation, after November 15, 1960, was sometimes known as "Mengel" and only for its Memphis, Tenn., Nashville, Tenn., Chattanooga, Tenn., Lexington, Ky., and Winston-Salem, N. C. locations. Container Corporation acquired a stock interest in Mengel Co. in 1954 and continued to increase its holdings of Mengel common stock, owning approximately 69% by December 1955 and approximately 97% by December of 1959. All of Mengel's preferred stock was retired in April 1956. On November 15, 1960 Mengel Co. was merged into Container Corporation. [¶ 1 Ex. I PX-1]

Agreed

A-2. Container Corporation, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

A-3. On those occasions when, prior to January 1963, Container Corporation considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 16 Ex. I PX-1]

Agreed

A-4. Prior to January 1963, when Container Corporation received a request from another defendant for the most recent price to a specific customer for corrugated containers, Container Corporation usually furnished the information requested. [¶ 21 Ex. I PX-1]

Agreed

Agreed

A-5. Since January 1963, it has been Container Corporation's policy that its personnel shall not request or furnish price information from or to other manufacturers of corrugated containers. Prior to 1961, Container Corporation permitted its plant sales managers and general managers in the Southeastern United States to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers. Beginning in 1961 and continuing until January 1963, it was Container Corporation's policy that only its Southeastern Divisional Manager was permitted to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers. [¶ 24 Ex. I PX-1]

Agreed

A-6. The extent and frequency with which such information was requested and furnished varied among Container Corporation and the several other defendants and among the plants and customers of Container Corporation. [¶ 31 Ex. I PX-1]

Agreed

A-7. In the circumstances set forth in Findings A-3 and A-4, Container Corporation requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1]

Not

Agreed

A-8. The price information requested and/or furnished by Container Corporation as described in Findings A-3 and A-4 related to the actual prices (or levels) charged customers in past transactions. [CX-4, pp. 152, 173-74]

Agreed

A-9. From time to time between 1958 and 1961, A. S. Clay, Sales Manager for the Winston-Salem Plant of Container Corporation, requested and furnished price information as described in Findings A-3 through A-5. From

time to time between 1955 and 1958, G. W. Colvin, when he was general manager of the Winston-Salem Plant of Container Corporation, and from time to time between 1961 and January 1963, when he was Southeastern Divisional Manager of Container Corporation, requested and furnished price information as described in Findings A-3 through A-5. [¶ 24 Ex. I PX-1; CX-4, pp. 162, 171]

A-10. Each officer or employee of Container Corporation responsible for pricing corrugated containers in the Southeastern United States (with the exception noted in Finding A-5) considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1; ¶ 24 Ex. I PX-1]

Not
Agreed

A-11. As a general rule, pricing decisions were made by Container Corporation at the plant level and the plant sales manager was primarily responsible for making price determinations. During the period between 1961 and January 1963, G. W. Colvin, Southeastern Divisional Manager, always communicated the price information he had received to the sales manager of the specific plant and generally did not communicate any advice or instructions concerning the price to be charged by the sales manager nor was he necessarily consulted by the sales manager concerning the price to be charged. [CX-4, pp. 180-82]

Agreed

A-12. Container Corporation requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Container Corporation from other defend-

Agreed
in Part

ants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Not
Agreed

A-13. Container Corporation had no special policy with regard to quotations made on the basis of information received from competitors. Each officer or employee of Container Corporation responsible for pricing corrugated containers in the Southeastern United States considered that he could make his own decisions concerning the prices to be charged or quoted after he had received price information from competitors. [CX-4, pp. 141-42, 147-48, 191-92]

Agreed
in Part

A-14. When G. W. Colvin furnished price information as described in Finding A-4, Colvin gave no consideration to whether the competitor might quote below the price previously charged that customer by Container Corporation. While Colvin's personal policy was generally not to cut a price that had been given to him, he testified that he knew of no such Container Corporation policy and that there were [infrequent] instances when Container Corporation had cut prices after obtaining price information from competitors and knew that there were some occasions when Container Corporation had its prices cut by competitors after giving price information to them. A. S. Clay had no rule, general practice, personal principle, or personal policy concerning the prices to be charged or quoted after he had received price information from competitors, and in each instance, he made the price determination himself. [¶ 70 Ex. I PX-1; CX-4, pp. 189-92, 141-42, 147-48]

A-15. When a Container Corporation plant sales manager requested and received price information as described in Finding A-3, the sales manager used the information along with Container Corporation's internal manual (which was a cost rather than a sales price manual) as well as his other market information to help him determine whether he was interested in obtaining the business and what price he would charge or quote that customer. The plant sales manager had no set policy with regard to submitting a quotation to a customer at a price lower than that which he had learned from a competitor. In determining his prices, each sales manager attempted to get as much as he could within reason. The sales manager felt no obligation with regard to a competitor who had furnished price information to him, nor was such obligation ever expressed to the sales manager by such a competitor. [CX-4, pp. 133-35, 138, 141-42, 147-48]

Agreed

A-16. In all instances the determination as to the price to be charged or quoted by Container Corporation was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Container Corporation exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

A-17. As stated in Finding A-5, Container Corporation stopped requesting or furnishing price information in January 1963. A study of Container Corporation's analyzed prices at its plants shows that in the nine month period from January to October 1963 average analyzed prices were substantially the same as the average analyzed prices at its plants in the nine month period immediately preceding

Agreed

January 1963. Moreover, the range between the highest and lowest prices in each of its plants in the nine month period before January 1963 was approximately the same as the range in those plants in the nine month period from January to October 1963. [DX-5, pp. 13-24]

Agreed

A-18. Container Corporation's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

A-19. Container Corporation's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for the years 1955 to 1963. [DX-6, pp. 27, 29, 30, 31, 33]

Agreed

A-20. Container Corporation's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not
Agreed

A-21. In requesting and/or furnishing price information as described in Findings A-3 through A-20 Container Corporation acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1]

B. Albemarle

B-1. Albemarle, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Regis, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

B-2. On those occasions when Albemarle considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

B-3. When Albemarle received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1] **Agreed**

B-4. The extent and frequency with which such information was requested or furnished varied among Albemarle and the several other defendants. [¶ 31 Ex. I PX-1] **Agreed**

B-5. In the circumstances set forth in Findings B-2 through B-4, Albemarle requested and/or furnished price information as described in such Findings from and/or to each of the other defendants, except Dixie of North Carolina, International, St. Joe and St. Regis. [¶ 32 Ex. I PX-1] **Agreed**

Agreed

B-6. The price information furnished by Albemarle as described in Finding B-3 related to prices charged customers in actual sales or prices actually quoted to customers. [CX-4, pp. 55-56; CX-5, pp. 252-53]

Agreed

B-7. From time to time, Anthony J. Bagley, President of Richmond Container from 1957 to September 9, 1959, and Division Manager of Albemarle after such date, and M. F. Dozier, Sales Manager of Richmond Container to September 9, 1959 and Division Sales Manager of Albemarle after such date, on occasion requested and furnished price information as described in Findings B-2 and B-3. [CX-4, pp. 54-55; CX-5, pp. 239, 245]

Not
Agreed

B-8. Each officer or employee of Albemarle responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed
in Part

B-9. Albemarle requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Albemarle from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Agreed

B-10. In all instances the determination as to the price to be charged or quoted by Albemarle was its individual

decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Albemarle exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

B-11. Albemarle's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

B-12. In requesting and/or furnishing price information as described in Findings B-2 through B-11 Albemarle acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1] **Not Agreed**

C. Carolina**Agreed**

C-1. Carolina, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

C-2. On those occasions when Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

C-3. When Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1]

Agreed

C-4. The extent and frequency with which such information was requested or furnished varied among Carolina and the several other defendants and among the customers of Carolina. [¶ 31 Ex. I PX-1]

Agreed

C-5. In the circumstances set forth in Findings C-2 through C-4, Carolina requested and/or furnished price information as described in said Findings from and/or to each of the other defendants, except St. Joe. [¶ 32 Ex. I PX-1]

Agreed

C-6. There is no evidence that the price information furnished by Carolina as described in Finding C-3 related

to prices quoted upon which an actual order had not at that time been received from the customer. [CX-5, pp. 364-65]

C-7. Carolina furnished price information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. **Agreed**

C-8. From time to time C. T. Ingram, Vice President and General Manager of Carolina, and Carter Holbrook, Sales Manager of Carolina, on occasion requested and furnished price information as described in Findings C-2 and C-3. [CX-5, pp. 338-39, 359-60] **Agreed**

C-9. Each officer or employee of Carolina responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1] **Not Agreed**

C-10. Carolina requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Carolina from other defendants was taken into account and utilized by Carolina in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1] **Agreed in Part**

C-11. In all instances the determination as to the price to be charged or quoted by Carolina was its individual decision. In deciding whether to seek a particular order **Agreed**

from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Carolina exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

C-12. Carolina's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

C-13. Carolina's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not
Agreed

C-14. In requesting and/or furnishing price information as described in Findings C-2 through C-13, Carolina acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

D. Continental

D-1. After October 26, 1956, Continental, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

D-2. On those occasions after October 26, 1956, when Continental considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. When Continental received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished. Continental neither gave to nor received from St. Joe any price information. [¶¶ 14, 19, 32 Ex. I PX-1] **Agreed**

D-3. The extent and frequency with which such information was requested or furnished varied among the plants and customers of Continental. [¶ 31 Ex. I PX-1] **Agreed**

D-4. The price information requested or furnished by Continental as described in Findings D-2 and D-3 was "past market," i.e., either the price at which Continental "had sold containers for or offered to sell [containers] for in the past." [CX-5, p. 383, lines 9-22] Quotations were frequently made to customers without ever developing into orders. [e.g. DX-147, 122, 173] **Not Agreed**

Agreed

D-5. From time to time between October 26, 1956 and January 1, 1957, and between January 1960 and March 31, 1963, Robert Groner, Jr., as one of Continental's Sales Managers; and from and after January 1, 1962, Jehan B. Johnson, as one of Continental's Sales Managers; and between October 26, 1956 and May 15, 1962, William B. Beams, as one of Continental's Sales Managers, requested and furnished price information as described in Findings D-2 through D-4. [CX-5, pp. 303-04, 368; CX-4, p. 64]

Not
Agreed

D-6. Each officer or employee of Continental responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed
in Part

D-7. Continental requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Continental from other defendants was taken into account and utilized by Continental in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Agreed

D-8. When Continental furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. [CX-5, p. 315]

D-9. In all instances the determination as to the price to be charged or quoted by Continental was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Continental exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1; CX-5, p. 312] **Agreed**

D-10. Continental's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

D-11. Continental's price trends also varied from plant to plant, as shown by comparing the price trends of its plants from the date it entered the corrugated container business to the date of the complaint. [DX-6, pp. 31, 33, 39] **Agreed**

D-12. Continental's prices also varied from month to month throughout the period it was in the corrugated container business. [DX-6, pp. 2-20] **Agreed**

D-13. It was Continental's policy with respect to requesting and/or furnishing price information to abide by the 1940 Consent Decree. [CX-5, pp. 315-316] **Not Agreed**

D-14. In requesting and/or furnishing price information as described in Findings D-2 through D-13 Continental acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1; CX-5, pp. 315-316] **Not Agreed**

E. Crown Zellerbach**Agreed**

E-1. Crown Zellerbach, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

E-2. On those occasions when Crown Zellerbach considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

E-3. When Crown Zellerbach received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished. [¶ 19 Ex. I PX-1]

Agreed

E-4. The extent and frequency with which such information was requested or furnished varied among Crown Zellerbach and the several other defendants and among the plants and customers of Crown Zellerbach. [¶ 31 Ex. I PX-1]

Agreed

E-5. In the circumstances set forth in Findings E-2 through E-4, Crown Zellerbach requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1]

Agreed

E-6. The price information furnished by Crown Zellerbach as described in Finding E-3 related to price charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the

customer but only after such a quotation was in the hands of the customer. [CX-4, pp. 116-21, 123; CX-7, p. 703]

E-7. From time to time, from and after November 1958, Gordon M. Clark, for a part of said time Sales Manager and later Resident Manager of the Greenville, S.C., plant of Crown Zellerbach, requested and furnished price information as described in Findings E-2 and E-3. [CX-4, pp. 103-04, 116, 123]

Agreed

E-8. Each officer or employee of Crown Zellerbach responsible for pricing corrugated containers in the South-eastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

**Not
Agreed**

E-9. Crown Zellerbach requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Crown Zellerbach from other defendants was taken into account and utilized by Crown Zellerbach in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

**Agreed
in Part**

E-10. When Crown Zellerbach requested price information as described in Finding E-2 from other defendants, it did so because such information gave Crown Zellerbach an opportunity to meet or beat the prices charged or quoted by such other defendants or enabled it to ascertain whether the prices required to obtain business from such purchasers

**Not
Agreed**

were so unattractive that Crown Zellerbach would not desire to make sales at such prices. [CX-4, pp. 123-24]

Agreed
in Part

E-11. When Crown Zellerbach furnished price information as described in Finding E-3 to other defendants, it did so because it gave Crown Zellerbach an insight as to who was actively competing for a particular piece of business. [CX-4, pp. 122-23]

Agreed

E-12. In all instances the determination as to the price to be charged or quoted by Crown Zellerbach was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Crown Zellerbach exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

E-13. Crown Zellerbach's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

E-14. Crown Zellerbach's prices varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not
Agreed

E-15. In requesting and/or furnishing price information as described in Findings E-2 through E-14 Crown Zellerbach acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

F. Dixie and Dixie of North Carolina

F-1. Dixie and its subsidiary, Dixie of North Carolina, are engaged solely in the box business. **Agreed**

(a) They are not part of an integrated company which is also engaged in the paper mill business. The only other non-integrated defendants are Carolina and Tri-State. **Agreed**

(b) As an independent box maker, which had already paid a profit on the paper, and had to make its profit, if any, out of the box, it was particularly sensitive to wide price fluctuations which characterized the industry. [CX-6, pp. 464-65; DX-140] **Not Agreed**

F-2. Dixie, in seeking business for the sale of corrugated containers was in competition with each of the other defendants except Dixie of North Carolina, St. Joe and St. Regis although not necessarily at all times or in all areas or for all purchasers. Dixie of North Carolina was not in competition with Albemarle, Crown Zellerbach, Inland, Miller, Dixie, St. Joe or St. Regis. It was in competition, in seeking business for the sale of corrugated containers, with each of the other ten defendants, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

F-3. On those occasions when Dixie or Dixie of North Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

Agreed

F-4. When Dixie or Dixie of North Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1; CX-6, p. 476]

Agreed

F-5. The extent and frequency with which such information was requested or furnished varied among Dixie and the several other defendants and among Dixie of North Carolina and the several other defendants. During differing intervals of time, Dixie did not request from or furnish such information to certain competitors. [¶ 31 Ex. I PX-1; CX-6, p. 474]

Not
Agreed

F-6. H. L. Mitchell, Jr. was President of Dixie and Dixie of North Carolina. His purpose in seeking such information was to verify the accuracy of information secured from customers by salesmen of Dixie. [CX-6, p. 463]

Agreed

F-7. Mitchell found that some of the information furnished by competitors upon request was inaccurate. [CX-6, pp. 467, 477, 482]

Agreed
in Part

F-8. The price information furnished by Dixie in most instances related to a price charged a customer in an actual sale. On occasion Dixie furnished information as to prices quoted upon which an actual order had not at that time been received from the customer. [¶ 34 Ex. I PX-1] The price information requested and/or furnished by Dixie of North Carolina was "the last price he [the competitor or Dixie of North Carolina] got for the item or order." [CX-7, pp. 648-49]

F-9. In the circumstances set forth in Findings F-1 through F-6, Dixie and Dixie of North Carolina requested and/or furnished price information as described in said Findings from and/or to each of the other defendants with which it competed. [¶ 32 Ex. I PX-1] **Agreed**

F-10. From time to time, Mitchell, President of defendant Dixie, requested and/or furnished price information as described in Findings F-3 and F-4. [CX-6, pp. 480-82] **Agreed**

F-11. From time to time, Joseph S. Schwind, Sales Manager for Dixie of North Carolina, requested and/or furnished price information as described in Findings F-3 and F-4. [CX-7, pp. 645-47] **Agreed**

F-12. Mitchell did not expect a competitor not to cut a price furnished by Mitchell or by anyone else at Dixie or Dixie of North Carolina. He gave such information with the hope (based not on any agreement but on his own analysis of his competitor's reaction) that the competitor would not cut any more than necessary to get the business. [CX-6, p. 475] **Not Agreed**

F-13. Mitchell had a policy of not calling the competition if he was going to cut a price; his experience was that some competitors would immediately reduce a price after answering an inquiry from Mitchell. [CX-6, pp. 466, 477; DX-136, 487] **Agreed**

F-14. Dixie and Dixie of North Carolina considered that they could request from or furnish to competitors or not request from or furnish to competitors, information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual de- **Not Agreed**

cision. [DX-1, p. 17; CX-6, pp. 465, 476] Neither Mitchell nor Schwind expected to get information each time it was requested by them. [CX-6, pp. 446, 465; CX-7, p. 651]

**Agreed
in Part**

F-15. Dixie and Dixie of North Carolina requested price information from other defendants in order to aid them in making informed pricing and marketing decisions. Price information received by them from other defendants was taken into account and utilized by each of them in individually determining the prices to be charged or quoted by them in the same manner, to the same extent, and with the same effect as price information which they usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1; DX-67, 136, 192, 487; DX-6, p. 478]

Agreed

F-16. In all instances the determination as to the price to be charged or quoted by Dixie or Dixie of North Carolina was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Dixie and Dixie of North Carolina exercised their own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

F-17. Dixie's price trends and Dixie of North Carolina's price trends differed from those of each of their competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

F-18. Dixie's prices and Dixie of North Carolina's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

**Not
Agreed**

F-19. Dixie, Dixie of North Carolina, and Mitchell were aware of the 1940 consent decree and acted in reliance upon and as contemplated by such decree. [¶ 23 Ex. I DX-1; CX-6, pp. 463, 473]

G. Inland

G-1. Inland, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

G-2. On those occasions when Inland considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

G-3. When Inland received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1; CX-7, p. 676] **Agreed**

G-4. The extent and frequency with which such information was requested or furnished varied among Inland and the several other defendants and among the plants and customers of Inland. [¶ 31 Ex. I PX-1] **Agreed**

G-5. In the circumstances set forth in Findings G-2 through G-4, Inland requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1] **Agreed**

G-6. From time to time, during the period covered by the complaint, Frank M. Talbot, Southern Region Sales Manager for Inland, and Barnell E. Roberts, Sales Mana- **Agreed**

ger of Inland's Macon, Georgia, plant, requested and furnished price information as described in Findings G-2 and G-3. [CX-6, pp. 580, 588; CX-7, pp. 674-75]

Agreed
in Part

G-7. In a written statement issued under date of July 14, 1961, Inland's policy with respect to requesting and furnishing price information from and to other manufacturers of corrugated containers was set forth. It was binding upon all of its Sales Managers, including the said Barnell E. Roberts and Frank Talbot. Such policy was unilaterally and independently adopted by Inland. Such policy, and the deposition testimony of said Roberts and Talbot, establish that:

Agreed
in Part

(a) Inland's purpose in the requesting and furnishing of price information was to enable it to be better informed in making independent price determinations. [DX-151; CX-6, pp. 581, 584-85, 593-94, 608; CX-7, pp. 689, 693]

Agreed

(b) Its policy in this regard was in reliance upon and believed by Inland to have been contemplated by the consent decree referred to in Findings 42 through 47 hereof. [DX-151]

Agreed
in Part

(c) [Inland's policy was to request] Price information was requested from another manufacturer if needed to make an intelligent price decision and if such information was not obtainable from some other source. Such information was [to be sought first from customers] received usually and ordinarily from the purchaser. In some cases, such information was sought to verify a claim of a purchaser (who was attempting to have Inland reduce its price) that another supplier had reduced its price, in cir-

cumstances in which the salesmen doubted the reliability of such claim. [DX-151; CX-6, pp. 581, 584-86, 593-94; CX-7, p. 693]

(d) Price information so received from another manufacturer was taken into account by Inland's Sales Managers in the same manner and with the same effect as like information usually and ordinarily received from the purchasers. [CX-6, pp. 579-82, 593, 608; CX-7, pp. 689, 693] Not Agreed

(e) In a situation in which Inland had a contract with a customer, who was then also being supplied by other manufacturers and during a period when prices had been low for years, and the customer reported that another supplier in the account had reduced its prices, which report the Sales Manager believed doubtful, such Sales Manager would attempt to verify such report with such other supplier because he did not desire to reduce Inland's prices any lower than in fact the prices had been lowered as represented by the customer. [CX-6, pp. 585-86] Agreed

(f) Said policy authorized Inland's Sales Managers to furnish price information requested by other manufacturers within the limits prescribed for requesting such information. Whether to furnish such information upon request was a matter of individual decision by the Sales Managers. It was believed by them that it served Inland's self-interest to furnish such information upon request because they believed that they could not obtain price information from another manufacturer unless they usually furnished price information when requested. [¶ 17 Ex. I DX-1; DX-151; CX-6, pp. 593-94 608] Agreed

Agreed

(g) Said policy and Inland's practice thereunder was to request and furnish only the price of the most recent past sale. [DX-151; CX-6, pp. 582-84, 588-91; CX-7, pp. 690-91]

Agreed

G-8. When Inland furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

G-9. In all instances the determination as to the price to be charged or quoted by Inland was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Inland exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

G-10. Inland's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Not

Agreed

G-11. In requesting and/or furnishing price information as described in Findings G-2 through G-10 Inland acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1]

H. International

H-1. International, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

H-2. Two employees of International were called by plaintiff to testify on deposition—Edward Agar, from 1948-1957 manager of International's Container Division plant in Spring Hill, Louisiana and since 1957 manager for the Southern Region of the Company's Container Division, and Hugh L. Reid, for the past 16 years general manager of International's Container Division plant at Georgetown, South Carolina. [CX-4, pp. 7-8; CX-6, pp. 548-49] **Agreed**

H-3. During the period 1955 to 1963 at times purchasing agents attempted to persuade International to lower its prices by advising International's sales representatives that its prices were too high when compared with those of other suppliers, and offered International the chance to meet a lower price in order to obtain or retain the business. Sometimes the purchasing agent identified the other supplier and price. Sometimes the price information supplied by the purchasing agent was incomplete, inaccurate or misleading. On occasion in the period prior to about June 1962, International made telephone calls to other suppliers to verify the information as to past prices charged which had been supplied by the purchasing agent. [CX-4, pp. 15-16, 26-27, 29-33; CX-6, pp. 559-60; ¶ 11 Ex. I DX-1] **Agreed**

H-4. Communication of price information by International to other suppliers of corrugated containers occurred infrequently, and without any pattern or regularity, and **Agreed in Part**

varied from period to period. Frequency ranged from about 10 or 12 calls a month to about 2 or 3 calls a month including those made as well as received, with many days without any calls and on some occasions 2 or 3 a day. [CX-6; pp. 560, 562, 564-65; CX-4, pp. 16, 21, 22, 25, 32]

Agreed

H-5. International had 23 salesmen in the Southeast making an average of 4 to 5 calls daily on customers and potential customers. In other words, International's salesmen in soliciting business made on the average 92 to 100 calls a day or 1800 to 2000 calls a month on purchasers of corrugated containers who bought on a spot or short-term basis covering immediate or near-term requirements. In 1962 International had 449 customers in the Southeast out of more than 10,000 potential customers. [114, 15 and Table I DX-1]

Agreed

H-6. Agar had broad administrative responsibilities for a number of plants including administration, production, sales and personnel and did not have any direct pricing responsibility; accordingly he had no files showing International's prices and on the infrequent occasions when he was asked for such information by a competitor he obtained it from the plant manager. While Reid had sole pricing authority for the Georgetown plant and had files showing past prices charged by International, he had many other duties in operating the plant and spent only a minor portion of his time in determining prices. [CX-4, pp. 7; 9-10, 21, 25-26, 31-32; CX-6, p. 562]

Agreed

H-7. In the circumstances set forth in Findings H-3 through H-6 and H-8 through H-17, International requested and/or furnished price information as described in said Findings from and/or to each of the other defendants

except Albemarle and St. Joe. One of International's employees, Reid, testified that he was not sure he had ever in the eight-year period in question communicated price information to five of the defendants, and the other International employee, Agar, testified that he did not know four of the 17 other defendants. As to the eight of the defendants about which he was questioned he could not recall any incident when he gave or received any price information from them. [¶32 Ex. I, PX-1; CX-4, pp. 18-20, 22-23; CX-6, pp. 567-71]

H-8. On those occasions when, prior to June 1962, International considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶17, Ex. I, PX-1] **Agreed**

H-9. International requested price information on past transactions from another supplier at times when International had been invited by a customer to meet the price of such other supplier. [CX-4, pp. 15-16, 29-33; CX-6, pp. 559-60] **Agreed**

H-10. When offered the opportunity by a customer to meet the price of another supplier, International sought information as to past prices charged from such other supplier to verify the customer's information about such supplier's price in those instances where International wanted to make certain it was a real price and the circumstances justified International making an effort to obtain the business of the customer. [CX-6, pp. 559-60] **Agreed**

Agreed

H-11. Prior to June 1962, when International received a request from another defendant for the most recent price to a specific customer for corrugated containers, International usually furnished the information requested. [¶22, Ex. I, PX-1]

**Not
Agreed**

H-12. Except for one employee more than seven years ago, on those occasions when International communicated price information to or received such information from other suppliers, it limited such communication between it and other suppliers to prices on past, completed transactions. [CX-4, pp. 15-16, 25-27, 32-33; CX-6, p. 565]

Agreed

H-13. In responding to specific requests for price information on past transactions by other suppliers of corrugated containers, International furnished only end prices for the particular corrugated box as to which inquiry was made. [CX-6, p. 561; CX-4, p. 16]

**Agreed
in Part**

H-14. In June 1962 International decided that it would no longer furnish price information to or request such information from other suppliers of corrugated containers. International made no announcement of such decision; those who called requesting information were informed that such information would not be furnished. [CX-4, pp. 16, 26, 28-29; CX-6, p. 560]

Agreed

H-15. During the time when International furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. [CX-6, p. 566; CX-4, p. 33]

**Not
Agreed**

H-16. International's officers and employees considered themselves free to request or furnish or not to request

or furnish past price information from competitors, and whether or not to request or furnish such past price information was their individual decision, except when International decided to stop furnishing or requesting price information, as noted in Finding H-14. [¶17(c), Ex. I, PX-1]

H-17. International requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. The price information received by International from other defendants was taken into account and utilized by International in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. [¶¶11, 13, 47, 70 Ex. I, PX-1; ¶¶12, 14 Ex. I, DX-1; CX-6, pp. 554, 566] **Agreed in Part**

H-18. There is no evidence that any employee of any defendant ever discussed with any employee of International the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information. **Agreed**

H-19. There is no evidence that any defendant ever made any complaint to International or that International made any complaint to another defendant with respect to price-cutting. [E.g., CX-6, pp. 550-552, 572] **Not Agreed**

Not
Agreed

H-20. International's requesting and furnishing price information was within the authorization of and in reliance on the 1940 Consent Decree. [¶ 23 Ex. I DX-1; DX-2; DX-3]

Not
Agreed

H-21. There is no basis for an inference of an agreement, combination or conspiracy as to International from the fact that it requested and received price information in the manner and to the extent International did so.

Agreed

H-22. As one of the factors in computing a price to offer or charge a customer, International on all occasions used its own internal estimating manual. International's manual was prepared and revised independently by it without any agreement or understanding with any other defendant. International did not give its manual to any competitor or customer but retained it for its own use. International did not discuss its manual, its preparation or revision, with any competitor. [CX-4, pp. 10-11, 13-15; CX-6, pp. 552, 556-558; ¶ 35 Ex. I PX-1; ¶ 8 Ex. I DX-1]

Agreed

H-23. International had no manuals of its competitors except those of National Container Company and Gaylord Container Corp. which had been obtained from customers of International. On infrequent occasions in the period about 1958-1960, with respect to accounts which were then being sold by Gaylord, reference was made to the Gaylord manual as an added aid with other factors in helping the plant manager make up his mind as to the price he would quote the customer. If in those accounts the price of a particular container was less when computed on the Gaylord manual than on International's internal manual, and this was business which Reid desired to retain or obtain based on many other factors as to the desirability of the

business, he would take into consideration the price developed from the Gaylord manual. In a period sometime before 1958 the National Container manual was referred to by Reid in the same way in competing for business at accounts which were being supplied by the National Container Corporation, although with less frequency. [CX-6, pp. 552-58; CX-4, pp. 10-15, 24-25, 33-34; DX-209]

H-24. There was no relationship in the prices developed on International's internal manual and on Gaylord's manual. With respect to some containers International's manual would develop a higher price; with respect to others it would develop a lower price. [CX-6, pp. 556-57; DX-209]

Agreed

H-25. In all instances the determination as to the price to be charged or quoted by International was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, International exercised its own business judgment. [¶70 Ex. I PX-1; CX-4, pp. 10-15; DX-205, 206, 207, 208, 210]

Agreed

H-26. There is no evidence that International intended to avoid or reduce price competition by requesting and furnishing price information in the manner and to the extent that it did so. International increased its capacity to compete by opening new plants in other market areas in the Southeast, in 1957 in Auburndale, Florida, and in 1962 in Statesville, North Carolina. [CX-4, pp. 15-16, 21, 26-27, 29-33; CX-6, pp. 559-60; Complaint par. 5; Answer of International par. 5; DX-5; pp. 48-51]

Agreed
in Part

Agreed

H-27. During the period 1955 to 1963 the trend of International's prices has been downward, while at the same time costs have increased. International continually instructed its employees to attempt to improve earnings by obtaining the highest possible prices for corrugated containers. [DX-6, p. 1; DX-205, 206, 207, 208, 209]

Agreed

H-28. International lost customers to and gained customers from other suppliers of corrugated containers on the basis of price. In 1960, out of 408 separate accounts in the Georgetown and Auburndale plants, 162 accounts, or almost 40%, were totally new accounts gained by these plants, while 64 accounts represented customers lost. Of the 408 accounts in 1960, 110 represented customers where in each case International's sales either rose to more than 150% or declined to less than 50% of the preceding year's sales to that customer. Thus in 1960, a total of 336 out of 408 accounts were involved in shifts of business to or from International—either totally or substantially (i.e., one-half or more). In 1961, out of 447 separate accounts at these same plants, 135 accounts, or 30%, were totally new accounts; 96 were lost. Of the 447 accounts in 1961, 143 represented customers where in each case International's sales either rose to more than 150% or declined to less than 50% of the preceding year's sales to that customer. Thus in 1961 a total of 384 out of 447 accounts were involved in shifts of business to or from International—either totally or substantially (i.e., one-half or more). In 1962, out of 449 separate accounts at those plants, 116 accounts, or 28%, were totally new accounts; at the same time more than 28% of the accounts or 114, were lost. Of the 449 accounts in 1962, 184 represented customers where in each case International's sales either rose to more than 150% or declined to less than 50% of the preceding year's

sales to that customer. Thus in 1962, a total of 414 out of 449 accounts were involved in shifts of business to or from International—either totally or substantially (i.e., one-half or more). These figures are representative of the entire period covered by the complaint. [CX-4, pp. 27-28; ¶ 5 Ex. 1 and Tables 1 and 2 DX-1]

H-29. International's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

H-30. International's price trends also varied from plant to plant, as shown by comparing the Georgetown and Auburndale plants' price trends for 1961 and for 1955-1963. [DX-6, pp. 28, 34, 39, 45]

Agreed

H-31. International's prices also varied from month to month throughout the period covered by the complaint. [DX-6, pp. 2-20]

Agreed

H-32. As stated in Finding H-14, International stopped requesting or furnishing price information in June 1962. A study of International's analyzed prices at its Auburn-dale, Florida, and Georgetown, South Carolina, plants shows that in the twelve-month period after June 1962 average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June 1962. Moreover, the range between the highest and lowest prices in the Georgetown and Auburndale plants in the year before June 1962 was approximately the same as the range in those plants in the year following June 1962. [DX-5, pp. 49-52]

Agreed

I. Mead**Agreed**

I-1. Mead, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not at all times or in all areas or for all purchasers. [¶¶ 3, 9 Ex. I PX-1]

Agreed

I-2. On those occasions when prior to 1961, and thereafter under the circumstances set forth in Findings I-5 and I-6:

Agreed

(a) Mead considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 18 Ex. I PX-1]

Agreed

(b) Mead received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually, the information requested was furnished. [¶ 23 Ex. I PX-1]

Agreed

(c) During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

I-3. The extent and frequency with which such information was requested or furnished varied among Mead and the several other defendants and among the plants and customers of Mead. [¶ 31 Ex. I PX-1]

I-4. The price information which Mead requested and/or furnished as described in Findings I-2(a), (b) and (c) and I-3: **Agreed**

(a) Was requested and/or furnished from and/or to each of the other defendants. [¶ 32 Ex. I PX-1] **Agreed**

(b) Related to prices charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the customer. [CX-4, pp. 92-97] **Agreed**

I-5. In June 1961, Mead issued a written directive to all of its personnel, one of the effects of which was to prohibit its personnel from requesting or furnishing price information from or to other manufacturers of corrugated containers. In the fall of 1961 the Containers Division of Mead, at the request of its Southeastern Regional Sales Manager, Virgil C. Shutze, temporarily relaxed the aforesaid prohibition against requesting and furnishing price information from and to other manufacturers of corrugated containers, to a limited extent as to him personally. Thereafter, said Virgil C. Shutze relaxed said prohibition to some extent to District Sales Managers under his supervision. Said Virgil C. Shutze, as Southeastern Regional Sales Manager for Mead's Containers Division, had jurisdiction over Florida, Georgia and Tennessee. During the period of the aforesaid relaxation of the prohibition against requesting and furnishing price information from or to other manufacturers of corrugated containers, District Sales Managers of Mead's Containers Division, Southeastern Region, requested and furnished the most recent price to a specific customer for corrugated containers from or to other defendants in the circumstances and as described in Findings I-2(a), (b) and (c), I-3, I-4(a), I-4(b), I-6, **Agreed**

I-11(a-d), I-12 and I-13. In the spring of 1962, Mead called its Southeastern Regional Sales Manager and the District Sales Managers of Mead's Containers Division to Mead's head office in Dayton, Ohio, at which Mead's policy, as enunciated in the directive referred to in Finding I-5, was reiterated by Mead's principal executive officers and those present were told that no exceptions would be countenanced. This has been Mead's policy since the spring of 1962. [¶¶26-30 Ex. I PX-1; CX-7, pp. 662-65; CX-4, p. 87; CX-6, p. 603]

Agreed

I-6. In the fall of 1961 Mead attempted to accomplish a general increase in its corrugated container prices. Several competitors also attempted to raise their prices at about the same time. Customers were not a dependable source of information as to the prices offered by competing suppliers. Without accurate market price information, when a customer stated that other corrugated box manufacturers had not increased their prices, Mead's sales personnel could either increase Mead's price as instructed and take the chance of losing the account, or keep the price at a level which the customer claimed he was getting from other suppliers and be sure to keep the account. Mead continued to lose position with its customers and it got to be an untenable situation. Mead thereafter temporarily relaxed, to a limited extent, as described in Finding I-5, its previous prohibition against requesting and furnishing price information from or to competitors, in order to permit Mead employees to seek information as to market price levels [in accounts for which Mead was competing]. [¶¶ 11, 56 Ex. I PX-1; CX-7, pp. 663-65]

Agreed

I-7. Mead stopped requesting or furnishing price information as described in Finding I-5. A study of Mead's

analyzed prices at its Atlanta, Georgia, Durham, North Carolina and Miami, Florida, plants shows that in the twelve-month period after April, 1962 average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June, 1961 [DX-5, pp. 53-58]

I-8. On those occasions when Mead did seek and receive price information from another defendant: **Agreed**

(a) Mead sought such price information only when no other source of such information was available, or when it had obtained recent price information from the purchaser and desired to ascertain the accuracy of such information. [¶¶ 13, 18 Ex. I PX-1; CX-4, p. 99] **Agreed**

(b) Mead requested such price information for the reasons set forth in Finding I-8(a), in order to aid it in making informed pricing and marketing decisions. The price information received by Mead from other defendants was taken into account and utilized by Mead in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47 and 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1] **Agreed in Part**

(c) Many factors influenced Mead's decision in making a price determination, and in making such a decision, Mead exercised its own business judgment. A price believed to have been most recently charged or quoted by a competitor, when Mead believed it had sufficient basis for such belief, was only one of **Agreed**

many factors influencing Mead's pricing decision.
[¶ 14 Ex. I DX-1]

**Agreed
in Part**

(d) In many instances, depending upon particular circumstances, Mead would quote lower or higher prices than that indicated by its information as to the most recent price charged the customer, from whatever source the information was obtained; and in all instances the determination as to the price to be charged or quoted was Mead's individual decision.
[¶ 70 Ex. I PX-1]

Agreed

I-9. On those occasions prior to 1961, and thereafter under the circumstances set forth in Findings I-5 and I-6 when competitors requested price information, Mead usually furnished price information to that competitor and hoped that doing so would prompt that competitor to furnish price information to Mead on those subsequent occasions when Mead considered it necessary to request price information. [CX-4, p. 98]

**Not
Agreed**

I-10. Mead's officers and employees responsible for pricing corrugated containers in the Southeastern United States felt free (with the exceptions noted in Finding I-5) to request or not to request and to give or refuse to give price information to competitors; and whether to request or furnish such information was an individual decision.
[¶ 17(c) Ex. I DX-1]

Agreed

I-11. During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

I-12. Mead's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

I-13. Mead's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 26, 33, 35] **Agreed**

I-14. Mead's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20] **Agreed**

I-15. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Mead exercised its own business judgment. **Agreed**

I-16. In requesting and/or furnishing price information as described in Findings I-2 through I-15 Mead acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1]. **Not Agreed**

J. Miller**Agreed**

J-1. Miller, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

J-2. On those occasions when Miller considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

J-3. When Miller received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1]

Agreed

J-4. The extent and frequency with which such information was requested or furnished varied among Miller and the several other defendants. [¶ 31 Ex. I PX-1]

Agreed

J-5. In the circumstances set forth in Findings J-2 through J-4, Miller requested and/or furnished price information as described in said Findings from and/or to each of the other defendants except St. Joe and St. Regis. [¶ 32 Ex. I PX-1]

Agreed

J-6. From time to time, Harold P. Kyle, as President of Miller, and William M. Noftsinger, as Vice President and Sales Manager of Miller, gave and received price information as described in Findings J-2 and J-3. [CX-6, pp. 425-27, 496-99]

J-7. Each officer of Miller responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Not
Agreed

J-8. Miller requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Miller from other defendants was taken into account and utilized by Miller in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Agreed
in Part

J-9. When Miller furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

Agreed

J-10. When Miller furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

J-11. In all instances the determination as to the price to be charged or quoted by Miller was its individual de-

Agreed

cision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Miller exercised its own business judgment.

Agreed

J-12. Miller's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

**Not
Agreed**

J-13. In requesting and/or furnishing price information as described in Findings J-2 through J-12, Miller acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

K. Owens-Illinois

K-1. Owens-Illinois, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

K-2. On those occasions when Owens-Illinois considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

K-3. When Owens-Illinois received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1; CX-5, pp. 211-12; CX-7, pp. 633-36] **Agreed**

K-4. The extent and frequency with which such information was requested or furnished varied among Owens-Illinois and the several other defendants and among the plants and customers of Owens-Illinois. [¶ 31 Ex. I PX-1] **Agreed**

K-5. In the circumstances set forth in Findings K-2 through K-4, Owens-Illinois requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1] **Agreed**

K-6. There is no evidence that the price information furnished by Owens-Illinois as described in Finding K-3 related to prices quoted upon which an actual order had not **Agreed**

at that time been received from the customer. [CX-5, p. 214; CX-7, pp. 627-35]

Agreed

K-7. From time to time, from and after October 1961, Thomas M. Cox, Jr., General Manager of the Southeastern Region of the Forest Products Division of Owens-Illinois, and from time to time, from and after the Spring of 1958, Kenneth E. Rosenbaum, for part of said time Sales Manager and later General Manager of the Salisbury, N. C., plant of Owens-Illinois, on occasion requested and furnished price information as described in Findings K-2 and K-3. [CX-5, pp. 207, 210-14; CX-7, pp. 628-33]

**Not
Agreed**

K-10. Each officer or employee of Owens-Illinois responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

**Agreed
in Part**

K-11. Owens-Illinois requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Owens-Illinois from other defendants was taken into account and utilized by Owens-Illinois in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Agreed

K-12. When Owens-Illinois furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price informa-

tion from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

K-13. When Owens-Illinois furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. **Agreed**

K-14. In all instances the determination as to the price to be charged or quoted by Owens-Illinois was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Owens-Illinois exercised its own business judgment. **Agreed**

K-15. Owens-Illinois' price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

K-16. Owens-Illinois' price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 26, 27, 32, 35] **Agreed**

K-17. Owens-Illinois' prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20] **Agreed**

K-18. In requesting and/or furnishing price information as described in Findings K-2 through K-17, Owens-Illinois acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1] **Not Agreed**

L. St. Joe**Agreed**

L-1. St. Joe, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Dixie, Dixie of North Carolina, and Miller, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

L-2. On those occasions when St. Joe considered it necessary to ascertain the accuracy of a customer's report of a price charged by another defendant or to ascertain from another defendant the most recent price charged to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

L-3. When St. Joe received a request from another defendant for the most recent price charged to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1; CX-7, p. 720]

**Agreed
in Part**

L-4. St. Joe requested or furnished price information from or to other defendants infrequently [, but when necessary]. [CX-7, p. 716]

Agreed

L-5. In the circumstances set forth in Findings L-2 through L-4, St. Joe requested and/or furnished price information from and/or to Container Corporation, Crown Zellerbach, Inland, Mead, Owens-Illinois, St. Regis, West Virginia, and Weyerhaeuser. [¶ 32 Ex. I PX-1]

Agreed

L-6. St. Joe neither furnished nor requested any price information except a price charged the customer in an

actual sale. [CX-7, pp. 710-712, 716, 721] No representative of St. Joe at any time requested from or furnished to any other defendant information as to prices in terms other than an end price or prices. [¶ 16 Ex. I DX-1]

L-7. When St. Joe requested or furnished price information, it was done exclusively by telephone. [CX-7, p. 714] **Agreed**

L-8. St. Joe would request price information from another defendant only after St. Joe had analyzed the business and determined that it was desirable from the standpoint of type of linerboard required, contribution to plant product mix, customer's credit standing, and other relevant factors. St. Joe then would not request price information from another defendant unless it did not have enough information itself to determine a price, had not received price information from a customer, and did not have its own past price record for that customer. [CX-7, pp. 715-16] **Agreed**

L-9. St. Joe requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by St. Joe from other defendants was taken into account and utilized by it in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1; CX-7, pp. 713-716] **Agreed in Part**

L-10. When St. Joe furnished another defendant, upon request, the most recent price charged to a specific customer it did so, believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary **Agreed**

to request such information, unless it usually furnished price information when requested by such other defendant. When St. Joe furnished price information to another defendant, St. Joe had no assurance that it would be able to obtain similar price information if it requested it on another occasion. [CX-7, p. 721]

Agreed

L-11. St. Joe had no company policy as to furnishing or requesting price information to or from other defendants. [CX-5, p. 321] The entire authority for pricing containers was left to its General Managers for its corrugated container plants at Port St. Joe, Fla. and Birmingham, Ala. [CX-5, p. 319; CX-7, p. 720] No one at its corporate headquarters in Jacksonville, Fla., had any responsibility for pricing specific customers, nor did they receive any reports from the General Managers showing any prices for specific customers. [CX-5, p. 319]

Not
Agreed

L-12. Each officer or employee of St. Joe responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed

L-13. When St. Joe furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

L-14. In all instances the determination as to the price to be charged or quoted by St. Joe was its individual decision. In deciding whether to seek a particular order from

a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, St. Joe exercised its own business judgment.

L-15. St. Joe's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

L-16. St. Joe's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 27, 29, 45] **Agreed**

L-17. St. Joe's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20] **Agreed**

L-18. In requesting and/or furnishing price information as described in Findings L-2 through L-17 St. Joe acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1] **Not Agreed**

M. St. Regis**Agreed**

M-1. St. Regis, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Albemarle, Dixie, Dixie of North Carolina and Miller, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

M-2. On the occasions when St. Regis considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer, such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 32 Ex. I PX-1]

Agreed

M-3. When St. Regis received a request from another defendant for the most recent price to a specific customer for corrugated containers, such information was sometimes, but not always, furnished. [¶ 19 Ex. I PX-1; CX-5, p. 224]

Agreed

M-4. The extent and frequency with which such information was requested or furnished varied among St. Regis and the several other defendants and among plants and customers of St. Regis. [¶ 31 Ex. I PX-1]

Agreed

M-5. In the circumstances set forth in Findings M-1 through M-4 St. Regis requested and/or furnished price information as described in said Findings from and/or to each of the defendants except Albemarle, Dixie, Dixie of North Carolina, and Miller. [¶ 32 Ex. I PX-1]

Agreed

M-6. The price information requested or furnished by St. Regis as described in Findings M-1 through M-5 related to prices charged customers in completed sales in which the customer had been billed. [CX-5, pp. 222-23]

M-7. From time to time, from and after October 1958, **Agreed**
W. L. Diggs, as Southern District Manager for St. Regis,
requested or furnished price information as described in
Finding M-6. [CX-5, p. 224]

M-8. Each officer or employee of St. Regis responsible **Not**
for pricing corrugated containers in the Southeastern **Agreed**
United States considered that he could request from or fur-
nish to competitors, or not request from or furnish to com-
petitors information as to prices for corrugated containers,
and whether or not to request or furnish such information
was an individual decision. [¶ 17 Ex. I DX-1]

M-9. Price information received by St. Regis' officers or **Not**
employees from other defendants was given consideration **Agreed**
in determining the prices to be charged or quoted by St.
Regis in the same manner and with the same effect as price
information received from customers. [¶¶ 11, 13, 47, 70 Ex.
I PX-1; ¶¶ 12 and 14 Ex. I DX-1]

M-10. When St. Regis furnished or requested such **Agreed**
price information, it furnished such information only in
response to a competitor's request and was supplied such
information only pursuant to its own specific request.

M-11. In all instances the determination as to the price **Agreed**
to be charged or quoted by St. Regis was its individual
decision. In deciding whether to seek a particular order
from a particular customer, or whether to offer to sell a
particular container, and in determining the price to be
charged or quoted, St. Regis exercised its own business
judgment.

Agreed M-12. St. Regis' price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed M-13. St. Regis' price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 27, 29, 35]

Agreed M-14. St. Regis' prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not Agreed M-15. In requesting and/or furnishing price information as described in Findings M-2 through M-14 Container Corporation acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1]

N. Tri-State

N-1. Tri-State, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

N-2. On those occasions when Tri-State considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

N-3. When Tri-State received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and the information furnished was accurate. [¶ 19 Ex. I PX-1] **Agreed**

N-4. In the circumstances set forth in Findings N-2 and N-3 Tri-State requested and/or furnished price information as described in said Findings from and/or to each of the other defendants, except St. Joe. [¶ 32 Ex. I PX-1] **Agreed**

N-5. From time to time, during the period covered by the complaint, Alan McDonald, Sales Manager for Tri-State, requested and furnished price information as described in Findings N-2 and N-3. [CX-6, pp. 448-50] **Agreed**

N-6. The price information requested and/or furnished by Tri-State as described in Findings N-2 and N-3 related to consummated sales. [CX-6, pp. 446-47] **Agreed**

Not
Agreed

N-7. Price information received by Tri-State from other defendants was taken into account by Tri-State in individually determining the prices to be charged or quoted by it in the same manner and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Not
Agreed

N-8. Each officer or employee of Tri-State responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed

N-9. When Tri-State furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

N-10. In all instances the determination as to the price to be charged or quoted by Tri-State was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Tri-State exercised its own business judgment.

Agreed

N-11. Tri-State's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

N-12. Tri-State was cognizant of the existence of the consent decree referred to in Findings 45 through 50 hereof and relied upon the terms thereof. [¶ 23 Ex. I DX-1]

O. Union-Camp

O-1. Union-Camp, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

O-2. On those occasions when Union-Camp considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. However, during the period from July 16, 1963 to October 10, 1963 (during which period Union-Camp was making a general increase in prices to its customers) Union-Camp neither requested nor furnished such price information. [¶ 15 Ex. I PX-1; CX-7, pp. 770-71] **Agreed**

O-3. When Union-Camp received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 20 Ex. I PX-1; CX-5, pp. 280-81; CX-7, pp. 633-36] **Agreed**

O-4 The extent and frequency with which such information was requested or furnished varied among Union-Camp and the several other defendants and among the plants and customers of Union-Camp. Union-Camp, at its Spartanburg plant, received four or five requests per week. [¶ 31 Ex. I PX-1, CX-5, p. 281] **Agreed**

O-5. In the circumstances set forth in Findings O-2 through O-4, Union-Camp requested and/or furnished **Agreed**

price information as described in said Findings from and/or to each of the other defendants, except St. Joe. [¶ 32 Ex. I PX-1; CX-5, p. 293]

Agreed

O-6. The price information furnished by Union-Camp as described in Findings O-2 through O-5 was the price at which it had sold or quoted to a specific customer. The plant managers of Union-Camp were authorized to give such price information at the request of a competitor. [CX-7, pp. 758-60]

Not
Agreed

O-7. In requesting and/or furnishing price information as described in Findings O-2 through O-6, Union-Camp acted in reliance upon and as contemplated by the 1940 Consent Decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

Agreed

O-8. During the time when Union-Camp furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Not
Agreed

O-9. Each officer or employee of Union-Camp responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was his individual decision (with the exception of the brief period in 1963, noted in Finding O-2, when Union-Camp was increasing its prices). [¶ 17 Ex. I DX-1]

O-10. The price information received by Union-Camp from other defendants was taken into account by Union-Camp in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1; DX-373 through 619] **Agreed in Part**

O-11. Lewis A. Wulff, from time to time, from and after July 1, 1963 until July 10, and from October 10 until October 14, 1963, as Southeastern Regional Sales Manager for Union-Camp; Frank B. Grimes, from January 1, 1960 until July 16, 1963, as Sales Manager of the Spartanburg, South Carolina, plant of Union-Camp; John I. Pritchett, during part or all of the period from December 1, 1959 until July 16, 1963, as an employee of Union-Camp; and J. E. Faulkner, Jr., from December 1, 1959 until July 16, 1963, as Sales Manager of the Jamestown plant of Union-Camp, requested and furnished price information as described in Findings O-2 et seq. above. [CX-5, pp. 277, 280-82; CX-7, pp. 758-61, 764; DX-450] **Agreed**

O-12. When Grimes, and the other Union-Camp plant managers referred to in Finding O-11 furnished most recent price information to a competitor, they were following a Union-Camp policy which permitted its plant managers to give this information in the hope that, when they needed it, the competitor, in turn, would furnish such information. Grimes believed he could not expect to receive such information unless he gave it. In addition, by furnishing such information to another defendant Union-Camp knows the source of some of the competition it will **Agreed**

meet for a particular piece of business. [CX-5, pp. 287, 296; CX-7, p. 757]

Agreed

O-13. Union-Camp requested most recent price information to enable it to determine whether, in a particular account and at a particular time, it wanted to meet a competitor's price, quote higher, or quote lower. [CX-5, pp. 283-87, 298-99]

Agreed

O-14. In all instances the determination as to the price to be charged or quoted by Union-Camp was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Union-Camp exercised its own business judgment.

Agreed

O-15. Union-Camp's price trends differed from those of each of its competitors and there is no parallel between them.

P. West Virginia

P-1. West Virginia, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

P-2. On those occasions when West Virginia considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

P-3. When West Virginia received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished. [¶ 19 Ex. I PX-1] **Agreed**

P-4. The extent and frequency with which such information was requested or furnished varied among West Virginia and the several other defendants and among the plants and customers of West Virginia. [¶ 31 Ex. I PX-1] **Agreed**

P-5. In the circumstances set forth in Findings P-2 through P-4, West Virginia requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1] **Agreed**

P-6. The price information requested and/or furnished by West Virginia as described in Findings P-2 through P-4 related to prices charged customers in actual sales, or to prices quoted upon, which an actual order had not at that **Agreed in Part**

time been received from the customer but only after such a quotation was in the hands of or had been sent forward to the customer as required by company policy. [CX-6, pp. 529-31]

Agreed

P-7. From time to time, during the period covered by the complaint, David B. Orcutt, Jr., Richmond District Sales Manager of West Virginia, requested and furnished price information as described in Findings P-2 and P-3. From time to time, from and after November 1959, Joseph T. Piemonte, Sales Manager of the Richmond Region of West Virginia furnished to three competitors information relating to prices charged customers in completed sales only, but he did not request any price information from others. [CX-6, pp. 533-35, 543-46]

Not Agreed

P-8. Each officer or employee of West Virginia responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed in Part

P-9. West Virginia requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by West Virginia from other defendants was taken into account by West Virginia in individually determining the prices to be charged or quoted by it in the same manner and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

P-10. When West Virginia furnished another defendant, upon the latter's request, price information it did so hoping that such information would be given to it on those occasions when it might want such information. [CX-6, pp. 536] **Agreed**

P-11. When West Virginia furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. **Agreed**

P-12. In all instances the determination as to the price to be charged or quoted by West Virginia was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, West Virginia exercised its own business judgment. **Agreed**

P-13. West Virginia's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

P-14. West Virginia's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 31, 32] **Agreed**

P-15. West Virginia's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20] **Agreed**

P-16. In requesting and/or furnishing price information as described in Findings P-2 through P-15, West Virginia acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1] **Not Agreed**

Q. Weyerhaeuser**Agreed**

Q-1. Weyerhaeuser, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

Q-2. On those occasions when Weyerhaeuser considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

Q-3. When Weyerhaeuser received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1]

Agreed

Q-4. The extent and frequency with which such information was requested or furnished varied among Weyerhaeuser and the several other defendants and among the plants and customers of Weyerhaeuser. [¶ 31 Ex. I PX-1]

Agreed

Q-5. In the circumstances set forth in Findings Q-2 through Q-4, Weyerhaeuser requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1]

Agreed

Q-6. The price information requested and/or furnished by Weyerhaeuser as described in Findings Q-2 through Q-5 related to prices charged customers in actual sales [CX-5, p. 267; CX-7, p. 729]

Q-7. From time to time, from and after the middle of August, 1961 to October 13, 1963, George W. Elliott, Jr., Sales Manager of the Charlotte Plant of Weyerhaeuser and from time to time, from and after June, 1962 to October 13, 1963, Ivan D. Wood, Vice President and Manager of the Shipping Container Division of Weyerhaeuser, on occasion requested and furnished price information as described in Findings Q-2 and Q-3. [CX-5, pp. 264, 266; CX-7, pp. 724, 727-729] **Agreed**

Q-8. Each officer or employee of Weyerhaeuser responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1] **Not Agreed**

Q-9. Weyerhaeuser requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Weyerhaeuser from other defendants was taken into account and utilized by Weyerhaeuser in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1] **Agreed in Part**

Q-10. When an employee of Weyerhaeuser made his individual decision to furnish another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, he did so believing that it was unlikely that he could obtain price information from such **Agreed**

other defendant, on those occasions when he might consider it necessary to request such information, unless he furnished price information when requested by such other defendant.

Agreed

Q-11. When Weyerhaeuser furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

Q-12. In all instances the determination as to the price to be charged or quoted by Weyerhaeuser was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Weyerhaeuser exercised its own business judgment.

Agreed

Q-13. Weyerhaeuser's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

Q-14. Weyerhaeuser's price trends also varied from plant to plant as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 28, 29, 31, 32]

Agreed

Q-15. Weyerhaeuser's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not
Agreed

Q-16. In requesting and/or furnishing price information as described in Findings Q-2 through Q-15, Weyerhaeuser acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

X. CONCLUSION

1. Plaintiff concedes that the facts do not evidence an express agreement to exchange price information or to restrict competition; rather, plaintiff contends and defendants deny that the Court may infer an agreement to exchange information as to the most recent prices for corrugated containers and may further infer an agreement to restrict competition. **Agreed**
2. The evidence in this case does not prove an agreement among the defendants, or any of them, to exchange, or to furnish on request, information as to the most recent price for corrugated containers. **Not Agreed**
3. The evidence in this case does not prove an agreement among the defendants, or any of them, to restrict competition. **Not Agreed**
4. The evidence in this case does not support an inference that there was an agreement among the defendants, or any of them, to exchange, or to furnish on request, information as to the most recent price for corrugated containers or to restrict price competition. **Not Agreed**
5. Plaintiff has also conceded that even were the Court to infer an agreement to exchange price information, it would still be necessary for plaintiff to prove that such agreement had the purpose and effect of unreasonably restricting price competition. **Not Agreed**
6. Plaintiff in consenting to, and the United States District Court in entering, the decree referred to in Finding 45, recognized the right to communicate price information, **Not Agreed**

and contemplated and approved the natural consequences of such communication.

**Not
Agreed**

7. The requesting and furnishing of price information by the defendants was not for the purpose and did not have the effect of eliminating, reducing, minimizing, or restricting price competition.

PART II

Defendants' Restatement of Certain Paragraphs in Plaintiff's Proposed Findings of Fact.*

Restatement of Paragraph 16

In or about May or June 1959, there was a meeting at the Sir Walter Raleigh Hotel in Raleigh, North Carolina, for a period of some 20 to 30 minutes, at which representatives of Container Corporation, Dixie, Crown Zellerbach and Owens-Illinois were present. Either John I. Pritchett or J. E. Faulkner, Jr., of Highland Container Corporation (a company which then had been partially acquired by Union-Camp in March 1959, and later fully acquired in September 1959, and merged into Union-Camp in December 1959), upon entering the meeting announced that their company was increasing its set-up charge from \$15 to \$25 and thereupon left the meeting. No comments were made after this announcement while Mr. Pritchett or Mr. Faulkner were present nor was there any comment or discussion after they left. [¶ 64 Ex. I PX-1; CX-7, pp. 622-23]

Agreed
in Part

On July 20, 1959, there was a meeting at Dimizzio's Restaurant in Salisbury, North Carolina, at which representatives of Carolina, Continental, Crown Zellerbach, Container Corporation, Dixie, Dixie of North Carolina, Mead, Miller and Owens-Illinois were present and at which some of them exchanged views as to how the trade had accepted an increase in set-up charges. [¶ 65 Ex. I PX-1]

Agreed

The representative of Owens-Illinois present at the meetings described in Paragraph 16 was Kenneth E. Rosenbaum. [CX-7, pp. 618, 622]

Agreed

* See Explanatory Note above.

Restatement of Paragraph 17**Agreed**

Mr. Rosenbaum was present when Mr. Roberts made the statement with respect to Spring Cotton Mills referred to in Paragraph 94. Owens-Illinois was not a supplier to Spring Cotton Mills. [CX-7, pp. 625-27]

Restatement of Paragraph 21**Agreed**

The representative of Crown Zellerbach present at the meetings described in Paragraph 16 was Gordon M. Clark. [CX-4, pp. 105-06, 108]

Restatement of Paragraph 22**Agreed**

Prior to July 27, 1961, Inland and Crown Zellerbach, among others, had announced general increases in their respective prices for corrugated containers in varying amounts, effective on varying dates. Subsequent to these public announcements a regularly scheduled meeting of Zones 10 and 11 of the Fibre Box Association was held on July 27, 1961, at which legal counsel was present. On July 31, 1961, Lee J. Ross, then manager of the Atlantic plant of Crown Zellerbach, wrote an inter-office memorandum to his superior in that company, as follows:

"As outlined in your conversation of last Friday morning, the following information was given to Paul Claus in San Francisco.

As per my letter to you of July 26, the statement as outlined was read by me to the Fibre Box Association. Inland Container also made a statement advising that there was a letter in the mail to their customers that prices would be increased a minimum of 10% on August 15.

During the meeting a phone call was received from Bill Diggs of St. Regis, and he stated that he felt his company would also support this advance in prices. No other comment was made by the representatives in attendance.

The following companies were represented:

Inland Container	Continental Can	Weyerhaeuser
Dixie Container	Union Bag	International
Mead	Maxwell Bros.	Paper
Mengel	H. & D.	

Not in attendance:

Owens-Illinois	Container Corp.
Carolina Container	St. Regis
Tri-State	Mead-Atlanta

We held a sales meeting today in Atlanta of the Atlanta sales personnel, and the price increase procedure was outlined in full."

[¶¶ 56, 60 Ex. I PX-1; ¶ 2(b) Schedule to PX-3; PX-48; DX-144, 150]

Restatement of Paragraph 27

The representative of Container Corporation present at the meeting described in the second paragraph of Paragraph 16 was Adolphus S. Clay. Agreed

Restatement of Paragraph 28

In 1960 or 1961 Mr. Clay was told by the purchasing agent at the Drexel Furniture Company that Drexel had been charged prices by other suppliers which were lower than prices charged by Container Corporation. Clay requested and received from competitors information as to Agreed

the prices charged Drexel, which differed from information which Clay had received from Drexel. Subsequently, Clay asked employees of Tri-State, Owens-Illinois and he believes International if they had recently reduced prices to Drexel, and Alan McDonald of Tri-State said that he had reduced his prices to Drexel roughly 3%. Because of this price competition Clay had lost a great deal of his business in this account. Clay expressed his intention to place his prices in a competitive position based on information given him by the purchasing agent. Subsequently Clay reduced his prices to Drexel 5%. [CX-4, pp. 148-149, 153-155]

Restatement of Paragraph 31

See infra under Restatement of 59 (and 31).

Restatement of Paragraph 42

**Not
Agreed**

H. L. Mitchell of Dixie testified that since March, 1962 95% of his competitors were "off the air, that is, no communication," and that during that period prices of corrugated boxes have "deteriorated in some instances 40 percent, simply for lack of communication." There is no evidence which supports this testimony. The facts are that Dixie competed with 14 of the defendants, that at no time during that period were more than four of the defendants "off the air," and that prices to particular accounts often "deteriorated" 40% or more when their suppliers were not "off the air." [¶ 9, 14 thru 30 Ex. I PX-1; CX p. 464; Table 3 DX-1]

Restatement of Paragraph 44

In or about February, 1962, Mitchell and representatives of Miller, Albemarle, Continental and West Virginia met in Mitchell's office at the latter's invitation after the paper mills had announced a price increase for linerboard, the basic raw material for corrugated containers. Mitchell inquired whether the others had increased or were increasing their prices to recover these increased costs.* Prior to the meeting, Continental had increased its container prices and had announced that fact to its customers, and Continental's representative at the meeting so stated. Also, prior to the meeting, West Virginia had made the decision to attempt to increase prices of containers to recover such increased cost, and its representative so stated at the meeting. "The meeting broke up as if it had not started." [CX-5, pp. 393-398; CX-6, pp. 483-486; CX-6, pp. 508-510; CX-6, pp. 524-527]

**Agreed
in Part**

* Defendants are willing to substitute the following language from Mitchell's testimony in substitution for the underlined language:

Mitchell testified that "I would think, knowing myself, that I called these people together to ask them, 'Are you going to get this *** money back or not?'"

Restatement of Paragraph 45

The representative of Dixie present at the meeting described in Paragraph 73 was Herbert L. Mitchell. [CX-6, p. 438]

**Not
Agreed**

Restatement of Paragraph 46

Joseph Schwind, Sales Manager for Dixie of North Carolina, attended the meeting at Dimizzio's Restaurant in

Agreed

Salisbury, North Carolina. At this time he had just started as Sales Manager in Morganton, and his purpose in going was to meet his competitors. [CX-7, p. 652]

Agreed

Mitchell, President of Dixie, attended the meeting at Dimizzio's Restaurant in Salisbury, North Carolina. His primary purpose in attending was to bring Schwind, who had just been put in charge of the Morganton plant to introduce him to as many of his competitors as possible. [CX-6, p. 490]

Restatement of Paragraph 47

**Not
Agreed**

H. L. Mitchell, immediately after a Fibre Box Association meeting, in a conversation with Anthony J. Bagley, representing Richmond Container, suggested that Richmond Container might raise its prices to Burlington Industries, but Bagley refused to do so. [CX-5, p. 49]

Restatement of Paragraph 53

Agreed

David B. Orcutt, Jr. was the representative of West Virginia who attended the meeting in the office of Mitchell, President of Dixie, described in paragraph 44, above. Prior to the meeting West Virginia had decided to attempt to increase its prices sufficiently to recover the increased cost of linerboard as previously announced by the linerboard mills and Orcutt stated, at the meeting, that West Virginia personnel had been instructed to do so. Orcutt did not know whether the other defendants whose representatives attended the meeting attempted to increase their prices. [CX-6, pp. 524-527]

Restatement of Paragraph 58

Robert Groner, Jr., on or about June 30, 1961, at a meeting of the Fibre Box Association attended by one or more of the other defendants and the Fibre Box Association's counsel, delivered a speech in which he reaffirmed Continental's intention to abide by the antitrust laws and the 1940 Consent Decree. Groner announced certain of Continental's sales policies which are public information. Groner said that Continental would attempt to sell its product at a profit. He noted that one of the prime causes of unprofitable pricing was the deception practiced on salesmen by purchasing agents when those purchasing agents were asked the price which they were currently paying for corrugated containers. He said that, to defeat this deception, his company would endeavor to determine the most recent price charged to a new customer before quoting blindly. Groner's speech made no reference to specific customers. Groner said that "anyone who has any real or imaginary problems with our firm can call me," and stated that such conversations would be "strickly [sic] legal according to the interpretation of the law by Malcolm White [Whyte]," the General Counsel of the Fibre Box Association. [PX-47]

Agreed
in Part

Restatement of Paragraph 59 (and 31)

On August 8, 1961, Groner, then Regional Sales Manager of the Southern District for Continental, advised Continental's district sales managers, including Continental's New Orleans Sales Manager, that lists containing the names of customers notified of a general 10% price increase "should be compiled and should be circularized fully, since this can be made public information."

Agreed

Agreed
in Part

On August 11, 1961, David J. Bloom, a sales manager for Mead at its Atlanta, Georgia, plant, received from Continental's New Orleans sales office such a list. Bloom had not requested the list and believed that it came to him by mistake. [PX-49; PX-50; DX-2; CX-4, pp. 99-101]

Restatement of Paragraph 60

Agreed
in Part

On various dates between July 24, 1961 and August 31, 1961, Continental, Container Corporation, Crown Zellerbach, Mead, Owens-Illinois, Union-Camp and West Virginia publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on September 1, 1961, and Inland and St. Regis publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on August 15, 1961. Each of the defendants attempted to increase its prices to the majority of its corrugated container customers and succeeded in increasing prices to some of its customers in varying amounts. Continental had publicly announced its price increase prior to August 11, 1961. On August 24, 1961 Robert Groner, Jr. attended a Fibre Box Association meeting at which one or more of the defendants were present. Groner, who had a duty to gather market information for Continental, reported to his superior that "the feeling at this meeting was that the price increase . . . would probably hold." Groner instructed his district sales managers to make no deviations from Continental's previously announced increase without specific permission. The "feeling" was in error because the price increase did not "hold." [¶ 56 Ex. I PX-1; PX-50; PX-51; DX-67]

Restatement of Paragraph 61

Robert Groner, Jr. and Jehan B. Johnson were the representatives of Continental who attended the meeting in the office of Mitchell, President of Dixie, described in paragraph 44 above. Prior to the meeting Continental had publicly announced an increase in prices of its corrugated containers in order to absorb the increased cost represented by the rise in the price of linerboard. Since Continental's price increase could not hold if its competitors did not increase their prices, Johnson was interested in knowing what his competitors were doing or had been doing. [CX-5, pp. 393-398] **Agreed**

Restatement of Paragraph 62

When Robert Groner, Jr. attended the meeting described in paragraph 73, he was not an employee of Continental and Continental was not in the corrugated container business. [¶ 3 Ex. I PX-1] **Agreed**

Restatement of Paragraphs 63-64

The representative of Continental present at the meetings described in the second paragraph of Paragraph 16 and in Paragraph 54 was William B. Beams. **Agreed**

Restatement of Paragraph 66

On one occasion when Container Corporation received from Continental the most recent price which Continental had charged to a specific customer, Container Corporation **Agreed**

analyzed Continental's price against Container Corporation's costs, determined that Container Corporation could charge less and still have a comfortable profit, and cut Continental's price. An employee of Continental complained to an employee of Container Corporation but Continental continued giving price information to Container Corporation when such information was requested.

Restatement of Paragraph 70

Agreed In 1962, the said Harold P. Kyle and the said William M. Noftsinger, were the representatives of Miller who attended the meeting in the office of Mitchell, President of Dixie, described in paragraph 44 above. Kyle's purpose in attending the meeting was to learn his competitor's attitude toward passing on to customers the increase in the cost of linerboard. [PX-22, pp. 12-13; PX-25, pp. 21-23]

Restatement of Paragraphs 71-72

Agreed The representative of Miller present at the meetings described in the second paragraph of Finding 16 and in Finding 54 was William M. Noftsinger. [CX-6, pp. 505-506, 510]

Restatement of Paragraph 73

Agreed Early in 1956 corrugated container manufacturers from the Baltimore area solicited business in the Eastern part of Virginia for the manufacture and sale of corrugated containers at prices which in general were lower than the prices which corrugated container users in the Eastern part of Virginia were then paying for similar corrugated containers. [¶ 67 Ex. I PX-1]

Miller, Dixie, Robert Gair Company prior to its acquisition by Continental, Richmond Container Corporation prior to its acquisition by Albemarle, and possibly West Virginia endeavored to ascertain the localities in Eastern Virginia in which the aforesaid Baltimore manufacturers were active, so that each could identify geographically the area in which it would be necessary to lower corrugated container prices to meet the competition of Baltimore manufacturers. - These matters were discussed by telephone and at a meeting. [¶ 68 Ex. I PX-1]

Thereafter, in early 1956, Miller and Richmond Container Corporation (subsequently merged into Albemarle) each adopted lower nominal board factors for Eastern Virginia than for Western Virginia. [¶ 69 Ex. I PX-1]

Restatement of Paragraph 78

The representatives of Albemarle present at the meeting described in Paragraph 44 were Anthony J. Bagley and M. F. Dozier. [CX-4, pp. 44-45; CX-5, p. 250] **Agreed**

Restatement of Paragraph 79

The representative of Richmond Container (immediately prior to its acquisition by Albemarle on September 9, 1959) present at the meeting described in Finding 54 was M. F. Dozier. [CX-5, pp. 517-518] **Agreed**

Restatement of Paragraph 80

In 1955, there was a meeting at the Plaza Hotel in New York, N. Y., at which representatives of defendant Dixie **Agreed**

and of other non-defendant corrugated container manufacturers were present. Anthony J. Bagley, then President of Richmond Container Company (which was acquired by defendant Albemarle four years later), announced that his Company would increase its prices to American Tobacco Company. After the meeting, Bagley increased his prices to American Tobacco Company but no one else did and Bagley thereafter withdrew his price increase. Bagley testified that for all intents and purposes the people who attended the meeting could have stayed home. [CX-4, pp. 40-43]

Restatement of Paragraph 81

Agreed

The representative of Richmond Container Company, present at the meeting described in Paragraph 73 was Anthony J. Bagley. [CX-4, p. 46]

Restatement of Paragraph 82

Agreed

Anthony J. Bagley met with competitors in the office of Herbert Mitchell, President of Dixie, on at least three occasions and discussed the price level of corrugated containers in the Richmond, Virginia, area. There is no evidence when these meetings occurred nor that any other defendant was present. [CX-4, pp. 39-40]

Restatement of Paragraph 94

**Agreed
in Part**

After a zone meeting of the Fibre Box Association, Roberts stated in the presence of several representatives of other defendants that he was going to increase his prices to Spring Cotton Mills. Roberts said nothing further. Roberts

had not decided to make this announcement prior to making it. No comment was made by any of the others present regarding the announcement. Roberts sought no agreement and stated that he would make no agreement. He expected that the others would not increase their prices. They did not. Inland did and lost the business. Later Inland reduced its prices to get back into the account. [CX-6, pp. 610-613; CX-7, p. 627]

Restatement of Paragraph 98

The representative of Carolina present at the meeting described in the second paragraph of Paragraph 16 was Carter Holbrook. **Agreed**

Restatement of Paragraph 110

In or about 1961 Weyerhaeuser, at the request of Continental, furnished Continental the most recent price that Weyerhaeuser had charged a certain account. After obtaining this information, Continental quoted a more attractive price to this account and took the business from Weyerhaeuser. Weyerhaeuser naturally was unhappy that it no longer had the business. Subsequently, upon inquiry from Weyerhaeuser, Continental confirmed that it had taken the account at a lower price. Weyerhaeuser thereafter attempted to regain the account. [CX-5, pp. 398-410] **Agreed**

PART III**Additional Findings of Fact Conditionally Proposed
by Defendants' Named Therein**

There is no evidence that any employee of St. Regis ever found himself in the presence of a competitor when the subject of prices of corrugated containers in the Southeast United States was mentioned except occasions either before or after the formal part of Fibre Box Association meetings when price information was furnished or requested as described in Finding 70. [CX-5, pp. 220-223] **Agreed**

There is no evidence that any representative of St. Joe was ever in the presence of a representative of any other defendant when the subject of prices of corrugated containers was mentioned. There is no evidence that any representative of St. Joe was ever informed about any meeting where the subject of prices of corrugated containers was mentioned. There is no evidence that any representative of St. Joe requested or furnished price information from and/or to any representative of any other defendant who ever attended any such meeting. **Agreed**

Except for the testimony of one witness who was uncertain, there is no evidence connecting International with any meetings other than Fibre Box Association meetings conducted in the presence of counsel. **Agreed**

MEMORANDUM

**IN SUPPORT OF DEFENDANTS'
PROPOSED FINDINGS OF FACT**

AND

**IN OPPOSITION TO CERTAIN OF PLAINTIFF'S
PROPOSED FINDINGS OF FACT**

Documentary Supplement

This Volume contains reproductions of certain of defendants' exhibits illustrative of the facts relied on by defendants as to certain of Defendants' Proposed Findings of Fact, particularly Findings 22 and 25. In addition to their support for these Findings, they also support many other findings proposed by the defendants. Thus, throughout Volume I of this Memorandum there are references to various of these exhibits, both in the text and in the footnotes.

This selection of illustrative exhibits is intended as a convenience only, and not as a substitute for the entire body of exhibits offered by these defendants.

Format:

In this Volume the exhibits are set forth in exhibit number order. On the left hand page is the data sheet and on the right hand page an offset reprint of the original document.* In any instance where an exhibit contains more than one page, it is continued on the following right hand pages.

Any material in an exhibit which is handwritten or of doubtful legibility has been reproduced in a footnote on the data sheet page for the Court's convenience.

Volume III contains two indices relating to this Volume. Index II-A sets forth the language of Finding 22 and Finding 25 with its various sub-paragraphs, followed by the exhibit number for each of the reproduced documents which support them.

Index II-B lists consecutively the number of each document in the supplement and indicates with an "X" which portions of Findings 22 and 25 the document supports.

* Exceptions are Defendants' Exhibits 155, 206 and 211, which have been printed in their entirety, since offset reprints of the originals were illegible.

DEFENDANTS' EXHIBIT 11

Document No. MEN-9-258

Description of Document:

Salesman's Call Report

Date:

September 7, 1961

Addressed to:

A. S. Clay, Sales Manager,
Winston-Salem Plant,
Container Corporation.

Written by:

George W. Crone, Jr.
Package Engineer,
Winston-Salem Plant,
Container Corporation.

Other Data:

"A 10% red figure" refers to an unfavorable corporate cost figure (based upon the Container Corporation cost estimating manual) for the conversion of container board into shipping containers. This estimated Container Corporation conversion or converting cost figure includes all elements of plant costs which became a part of the finished product except for the cost of materials. The higher the percentage of "red," the larger the amount by which the estimated corporate conversion cost will exceed the amount to be realized at that price and the less desirable the business.

Exhibit Text

Winston-Salem, North Carolina,
September 7, 1961.

Mr. A. S. Clay.

CALL REPORT:

Kimberly Yarn Mills, Inc.,
Mt. Holly, North Carolina.

Roger Young, the manager at Kimberly, told me that he has a contract with Weyerhaeuser that guarantees his price of \$946 per M. or lower until March, 1962. He explained that this or "lower" meant that if someone came by and reduced his price that Weyerhaeuser would meet any lower price and guaranteed they would not increase his prices prior to March, '62.

The box specifications are listed below:

46 1/2 x 20 1/2 x 28 1/4

4" Overlap T&B, Stitched,
3 Panels - 2 Colors

When we work this box back on a 500 lot delivery, it shows a 10% red figure.

George W. Crone, Jr.

GWCjr/pp.

Ref. 8. 11.

MEN - 9 - 258

DEFENDANTS' EXHIBIT 32

Document No. MEN-9-309

Description of Document:

Inter-Office Memo

Date:

December 23, 1960

Addressed to:


D. A. Theobald, General Manager,
Fernandina Plant,
Container Corporation.

Written by:

R. T. Porter, Package Engineer,
Chicago District,
Container Corporation.

Other Data:

"MSF" refers to thousand square feet.

Exhibit Text 

CHICAGO DISTRICT - CODEM

December 23, 1950

D. A. Theobald
BERKMANHILL

RE: Morton Salt Company

In November of this year when there was a reduction in the cost of medium which translated out to about 25¢ per bag, Gaylord went to Morton and made a price reduction on this basis. On November 19, when I had a session with Harry McGill of Morton, I received this information and after telling him of the many increases we had absorbed and I felt that for this reason it was not time to talk cost reduction but that we, nevertheless, could on the market and that he could expect us to be competitive.

On the "Super" 2 1/2/1000 container, the 7.147 feet translated out to a reduction of \$1.00, making the price \$108.20. On the "Regular" 2 1/2/1000, which you priced at \$55.50 the same \$1.00 reduction gave us a price of \$54.50. I meant to price the orders when they came through on this basis, but apparently, your order #406 slipped past me to you.

Mr. McGill just phoned me to call my attention to the difference in billing and says he will put through your Invoice #0712-251 for payment and asks that we issue an adjusting credit.

Price reductions at a time when it is difficult to show profits hurt, I know, but good customer relations are to be maintained, I am sure you agree with me.

R. T. Porter

RTP/s

6/2/51

DEFENDANTS' EXHIBIT 33

Document No. MEN-9-310 (2 pages)

Description of Document:

Inter-Office Memo

Date:

May 5, 1960

Addressed to:

R. N. Alday;
Sales Manager,
Fernandina Plant,
Container Corporation

Written by:

T. E. Freeley,
Package Engineer,
New York,
Container Corporation

Other Data:

Pencilled notation on copy of quotation reads:

"I/13 offered above @ 12% 959.20 for 6M in lots of
1.5M to meet I.P. H&D had less. TEF"

The initials "TEF" refer to T. E. Freeley.

"I.P." refers to International.

"H&D" refers to "Hinde & Dauch" which, in turn,
refers to West Virginia.

Men-9-310

G-310

NEW YORK

May 5, 1960

R. M. Alday
FERMANINA

U.S. RUBBER COMPANY
Gastonia, No. Carolina

Attached is a copy of our quotation of January 6th on Ruby Yarn boxes for subject company's Gastonia, N. C. property. U.S. Rubber has asked us to quote again against an order for 6000 of these containers. The containers would be released in lots of 1500, the first shipment to be made May 26th.

Please note that in January we originally quoted \$1,068 plus \$33 set-up, and on January 13th reduced our price 12% to \$959.20 to meet I.P.

For your ready reference, I am also attaching a copy of our memo of January 14th, which gives you a complete run-down on what happened on the last order. I think we can well expect to have both I.P. and H & D active in this inquiry again.

Please phone or wire prices by Friday, May 6th.

Kindest regards.

TZF/ls


T. E. Frealey

cc-R, B. Bennett, New York

44-2-33

DEFENDANTS' EXHIBIT 33

Continued

Continued Exhibit Text 

CONTAINER CORPORATION OF AMERICA

2000 BROADWAY, NEW YORK 10001
 1000 BROADWAY, NEW YORK 10001

U.S. LUMBER COMPANY

Canton, N.C.

North Carolina

QUOTATION

DATE January 6, 1950

PRICES F.O.B. Fernandina Beach

TERMS 15 10 Days Net 30 after deduction of transportation charges.

ORDER TO BE SHIPPED 15 DAYS AFTER MANUFACTURE

CAN SHIP WITHIN 30 DAYS ON RECEIPT OF ORDER

THIS QUOTATION SUBJECT TO CHANGE OR WITHDRAWAL WITHOUT NOTICE

ORDERS PLACED AGAINST THE FOLLOWING QUOTATION ARE SUBJECT TO THE CONDITIONS PRINTED ON THE BACK HEREOF

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
3-1/2"	22-1/2" x 22-1/2" x 27-1/2"	47.015	13.00
CLAS	25% BY SPLICED		
	Printing 10 23		

1/13 Offered above @ - 12% 959.22
 for 4M m/bk to 1.5M
 to net L.P.

Had not been

T.E.C.

CONTAINER CORPORATION OF AMERICA

D. L. FORD
 Sales Service

T. E. Frealey, Packaging Engineer

THIS QUOTATION IS SUBJECT TO CHANGE OR WITHDRAWAL WITHOUT NOTICE AND TO YOUR APPROVAL THEREOF

1/13 33-2

DEFENDANTS' EXHIBIT 39

Document No. MEN-9-355

Description of Document:**Salesman's Call Report****Date:****June 9, 1961****Addressed to:****Sales Manager,
Fernandina Plant,
Container Corporation****Written by:****"Smith" refers to Gordon Smith,
Package Engineer,
Fernandina Plant,
Container Corporation****Other Data:****Comments read as follows:**

"Bill called to say that two companies had given \$95 printed prices on 24-21½s. Gaylord has accepted this price. I explained that this is a money losing price which Bill realizes. What do you suggest? I see nothing else to do but accept this price. I would like to get out of 75¢ cwt pick up allowance but again, Gaylord has already agreed to it. Bill will tell me who gave these prices but not over the phone."

Ink notation on left-hand side of report reads:

"6/12/61 O.K. RNA". The initials "RNA" refer to R. N. Alday, Sales Manager, Fernandina Plant, Container Corporation.

"Gaylord" refers to the Gaylord corrugated container division of Crown Zellerbach.

Exhibit Text

* For handwritten text of exhibit, see "Other Data" above.

Rush - W. J. Carlson 95-

100-355

date 6/9/61

Subject: Supplies

A. Company: Besio Products, called on Bill Edwards

B. Precedence on this call: Quotation Sample

Job Work Routine Call Results of Call

Comments and Recommendations: Bill called to see that

two companies had given a printed price on 6/8/61.
Gayles had accepted this price. I explained
that this is a money loan price which Bill receives.
What do you suggest? I am willing to
to do but accept this price. I would like
to get out of it but pick up all the work. but again,
Gayles has already agreed to it. Bill will tell
me what you think of this but not over the phone.

C. When do you expect to call again? Schedule Other Monday 6/12

D. What new proposals will you present?

E. Is there anything further that we can do to help you?

Could you let me know what our policy will
be in this matter?

Signed: WJCS

6/9/61

DEFENDANTS' EXHIBIT 42Document No. **MEN-9-363**

Description of Document:
Letter from Customer

Date:
December 27, 1961

Addressed to:
Container Corporation of America,
Savannah, Ga.,
Attention of Richard M. Cole,
Package Engineer,
Fernandina Plant,
Container Corporation

Written by:
A. I. Gross, a purchasing agent for
Atlas Shirt Company, Inc.,
New York, N. Y.

Other Data:

Pencil notation on right-hand side of letter was made by R. M. Cole and reads:

"Pack in LTL Our quote 580.25, 517.95, 422.15, 305.60, 239.84, 152.10".

"LTL" means less than a truckload. The notation "Our quote" and the pencilled numbers represent Container Corporation's last quotation to the customer as contrasted with the prices listed by the customer.

Exhibit Text

* For handwritten note on exhibit, see "Other Data" above.

Tel. Long. area 5-4151



FACTORY - LYONS, GEORGIA

Shirt

COMPANY, INC.

10 WEST 33rd STREET • NEW YORK 1, N. Y.

December 27, 1961

Container Corporation of America
310 Drayton St.
Savannah, Ga.

Att: Richard M. Cole

Dear Mr. Cole:

As per our recent conversation, I am pleased to give you the following quotations on what we are paying for corrugators at the present time f. o. b. factory.

<u>500</u>	<u>1 IN</u>				
2%	35%	#8	Price per thousand	\$536.35	✓
11%	50%	#6	" " "	494.75	✓
35%	7%	#4	" " "	360.75	✓
16%	61%	#3	" " "	301.75	✓
13%	28%	#2	" " "	217.40	✓
30%	6%	#1	" " "	131.90	✓

Back in ATL

If you can meet these prices, we will be very happy to hear from you.

Very truly yours,

ATLAS SHIRT CO., INC.

E. I. Gross

AIB:yh

af. 4. 42

DEFENDANTS' EXHIBIT 44

Document No. MEN-9-365

Description of Document:

Inter-Office Memo

Date:

July 21, 1961

Addressed to:

Warren L. Cargal,
Assistant Sales Manager,
Fernandina Plant,
Container Corporation

Written by:

Mercer Morrison, Package Engineer,
Fernandina Plant,
Container Corporation

Other Data:

Walter Berg was the production manager of the customer.

Name handwritten on report is "Olin Mathieson," a company engaged in the sale of corrugated containers in the Southeastern United States.

Mr. Alday

Mr. 9-365

ORLANDO CONTAINER

July 21, 1961

Mr. Warren L. Cargal
FERNANDINA

REFERENCE: Salada-Sheriff-Morsey
Shoreline Enterprises Division

Per our telephone conversation Tuesday, and our subsequent quote received Thursday which I gave to customer that day, comparing this quote with our last quote we were exactly \$10.00 less. However, as reported on my Sales Report 7-12-61, customer told me we were \$12.00-\$15.00 higher than competition. A further followup of this account, Walter Berg told me we were exactly \$4.00 higher than ~~cross~~ *Ch* ~~Illinois~~, therefore, the business was placed with them.

Patton
For your information.

Mercer Morrison

MM:rc

Ref. E. 44

DEFENDANTS' EXHIBIT 49

Document No. MEN-9-380

Description of Document:

Letter from customer

Date:

December 20, 1960

Addressed to:

Container Corporation,
Fernandina Plant
Att: Mr. Norman Alday,
Sales Manager,
Fernandina Plant,
Container Corporation.

Written by:

J. H. Long, Assistant Purchasing Agent,
Cannon Mills.

Other Data:

[None.]

CANNON MILLS PURCHASING DEPARTMENT

C. H. DRY
PURCHASING AGENT



ASSIST. PURCHASING AGENTS
R. L. CRUTE
C. T. DAVIS
J. H. LONG
G. A. MILLER, JR.

KANNAPOLIS, NORTH CAROLINA, U. S. A.

December 20, 1960

7-11-61
9-380

Container Corporation of America
Container Division
Fernandina Beach, Florida

Att: Mr. Norman Alday

Gentlemen:

There has been a general reduction in the price of our corrugated cartons, effective January 1, 1961. The reduction amounts to approximately 2-1/2%.

We have not had a chance to talk to you in person, or over the phone about this, and we would like for you to let us know immediately if your prices will be competitive.

Yours truly,

CANNON MILLS PURCHASING DEPARTMENT

J. H. Long
n

Long/no



Ap. E. 49

DEFENDANTS' EXHIBIT 50

Document No. MEN-9-381.

Description of Document:

Inter-Office Memo

Date:

March 21, 1961

Addressed to:

R. N. Alday, Sales Manager,
Fernandina Plant,
Container Corporation,

Written by:

T. E. Freeley, Package Engineer,
New York, Container Corporation.

Other Data:

"CCA" refers to Container Corporation.

"H. & D." refers to "Hinde & Dauch" which in turn,
refers to West Virginia.

"Gaylord" refers to the Gaylord corrugated container
division of Crown Zellerbach.

NEW YORK

March 21, 1961

*Handwritten: E. J. ...
P. M. 9-381*

R. N. Alday
FERNANDINA

U.S. RUBBER COMPANY
Gastonia, N. C.

Confirming our wire, Ruby Yarn dies are to be returned to U.S. Rubber Company, Gastonia, N. C., attention: R. Hartsell. For your own information, Carolina Container got the business at \$801.25. Gaylord quoted \$839.00, OEA went as low as \$847.00, H.&D. \$850.00 and Union Bag \$858.00.

U.S. Rubber admits that prices have dropped to ridiculously low levels and doubts that Carolina Container would want repeat business at these prices.

Kindest regards,

TEV/as

Handwritten signature
T. E. Frealey

Handwritten: 4/ El. 50

DEFENDANTS' EXHIBIT 52Document No. **MEN-9-401****Description of Document:****Salesman's Call Report****Date:****October 6, 1961****Addressed to:****Sales Manager,
Fernandina Plant,
Container Corporation.****Written by:****"Dick Cole" refers to R. M. Cole,
Package Engineer,
Fernandina Plant,
Container Corporation.****Other Data:*****Comment reads: "If we can get competitive I believe
we will get the next order—Union Bag very low—
Lewis said he would have more info on next call"****Exhibit Text**

*** For handwritten note on exhibit, see "Other Data" above.**

mon-9-401

Date

10/6/61

Salesman: Dick Cole

A. Company Robbins Packing Co. Called at Lewis HookB. Reasoned on this call: Quotation Sample Art Work Routine Call ☒ Results of Call Comments and Recommendations If we can get

competitive I believe we will get the
next order - Union Bag very low -
Lewis said he would have more
info on next call

C. When do you expect to call again? Schedule ☒ Other D. What new proposals will you present? E. Is there anything further that we can do to help you? Signed: Cole

df. 52

DEFENDANTS' EXHIBIT 56Document No. **MEN-9413****Description of Document:****Salesman's Call Report****Date:****November 2, 1961****Addressed to:****Sales Manager,
Fernandina Plant,
Container Corporation.****Written by:****R. M. Cole,
Package Engineer,
Fernandina Plant,
Container Corporation.****Other Data:*****Comments read as follows:**

**"Mr. Whitman looked at my quote—
C.C.A. on 30 $\frac{3}{4}$ x 20 x 36 3M \$844.45
Quality on 30 $\frac{3}{4}$ x 20 x 36 3M \$773.
St. Regis on 30 $\frac{3}{4}$ x 20 x 36 3M \$665.
?"**

**"Quality" refers to a company engaged in the manu-
facture and sale of corrugated containers in the
Southeastern United States.**

"C.C.A." refers to Container Corporation.

Exhibit Text

*** For handwritten portion of exhibit, see "Other Data" above.**

man 9-413

Date 11/2/61Telephone: R. M. COLECompany Swainston Spots ^{Wear} Called on Mr. WhitmanRepresented on this call: Quotation ☒ Sample ☐In "Book" ☐ Routine Call ☒ Results of Call ☐Comments and Recommendations Mr. Whitman looked at

my quote - C.C.A. on 30 3/4 x 20 x 36 3rd 844.45
 Quality " " " " 3rd 773.
 St. Regis " " " " 3rd 665.

C. When do you expect to call again? Schedule ☒ Other ☐D. What new proposals will you present? ☐E. Is there anything further that we can do to help you? ☐Signed: Cl.

def. Ex. 56

DEFENDANTS' EXHIBIT 57

Document No. MEN-9416

Description of Document:

Inter-Office Memo

Date:

June 27, 1960

Addressed to:

Warren L. Cargal,
Assistant Sales Manager,
Fernandina Plant,
Container Corporation.

Written by:

Gordon Smith,
Package Engineer,
Fernandina Plant,
Container Corporation.

Other Data:

Bill Edwards was Vice President of the customer.

Copies of the memorandum were addressed to R. N. Alday and D. A. Theobald, Sales Manager and General Manager, respectively, of the Fernandina Plant, Container Corporation.

"CCA" refers to Container Corporation.

"Gaylord" refers to the Gaylord corrugated container division of Crown Zellerbach.

COLUMBUS, GEORGIA

June 27, 1960

Mr. Warren L. Cargal
PERMADINA

Re: Besco Products Inc., Zebulon, Georgia

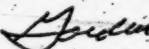
Bill Edwards mentioned in conversation today that Inland had offered him a price of \$114.00 on 24-2 1/2's sometime last week. Inland apparently has not been enjoying as much volume as they desired. Bill did not give any business at this price.

From conversation with another canner, Bill had discovered that Inland had offered 24-2 1/2's elsewhere at \$105./M. This in all probability was at Haddock, Ga.

Gaylord as the other supplier this year at Besco has offered to meet any prices he may receive. I feel sure that Gaylord will be asked to meet this \$114./M price. CCA has not committed ourselves to any deal to meet other prices. However, if Gaylord meets this price, I think we would be in an unflattering position as the only supplier at \$121./M.

Please advise me of what our position might be on this matter. I plan to call again on Bill about July 11th.

Our initial order arrived on Saturday and is being unloaded today. They are well pleased with the colors used and print design. We were asked to print an easy open design on the inner flaps of all future orders, which change has been requested this date.


Gordon Smith

cc: Mr. R. N. Alday FLX
Mr. D. A. Theobald FLX

dy. 4. 57
time 7/2/60

DEFENDANTS' EXHIBIT 58

Document No. MEN-9418 (2 pages)

Description of Document:

Inter-Office Memo

Date:

November 14, 1961

Addressed to:

**B. N. Alday,
Sales Manager,
Fernandina Plant,
Container Corporation.**

Written by:

**R. B. Ward,
Package Engineer,
Fernandina Plant,
Container Corporation.**

Other Data:

Benny Fenzer was plant manager of the customer.

The column of pencilled prices listed on the copy of the Mead quotation were Container Corporation's prices for the same items in the same quantities as the lower prices in the last column quoted by Mead.

197

GRAND CONTAINER

November 14, 1961

Mr. R. N. Alday
FERNANDINA

REFERENCE: Big Dad Manufacturing Co. - *Cross reference.*

Attached please find a quotation on the subject company's container requirements. Please note that the prices shown on this quotation are approximately 2-3% lower than our price. Benny Fenster, of Big Dad, advised me that I could retain this business if we would meet these prices. Please check and advise me as soon as possible.

R. B. Ward
R. B. Ward


REW:rc

Attachment

dy. 21. 58-1

DEFENDANTS' EXHIBIT 58

Continued

Continued Exhibit Text 

QUOTATION

MEAD CONTAINERS
 2000
 1000

MEAD CONTAINERS

THE MEAD CORPORATION

2000 NEW STREET
 NEW YORK, N.Y. 10001
 PHONE 212 600 0000

TO BIG DAD MFG COMPANY
 STANKE FLORIDA

DATE ORDERED 11-19-61

CALL NEW YORK

FOR THE ATTENTION OF

THE FOLLOWING QUOTATION IS SUBMITTED IN RESPONSE TO YOUR INQUIRY FOR

ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
17 DP	2700 TEST RSC PRINTED 2P 20 STITCHED OUT 15 X 35 X 23 TSF 35 445	250	837.00	212.10
		500	775.00	750.00
		1000	744.90	719.10
18 SPP	1500 TEST RSC PRINTED 2P 20 STITCHED OUT 24 X 15 X 3 TSF 10 738	250	270.65	254.25
		500	268.65	197.25
		1000	177.65	157.25
19 DP	2750 TEST RSC PRINTED 2P 20 STITCHED OUT 21 1/2 X 15 1/2 X 21 1/2 TSF 21 842	250	570.60	528.25
		500	508.60	430.25
		1000	477.60	445.25
20 SS	2500 TEST RSC PRINTED 2P 20 STITCHED OUT 35 1/2 X 24 1/2 X 22 1/2 TSF 41 444	250	1172.15	1102.95
		500	1110.15	1040.95
		1000	1079.15	1009.95
21 NPP	1750 TEST RSC PRINTED 2P 20 STITCHED OUT 24 X 16 X 7 1/4 TSF 14 049	250	326.75	309.60
		500	264.15	247.60
		1000	233.15	216.60

1325
 2500

PLANTS LOCATED AT ST. LOUIS, MO.; KANSAS CITY, MO.; CHICAGO, ILL.; NEW YORK, N.Y.; PHILADELPHIA, PA.; PITTSBURGH, PA.; RICHMOND, VA.; ST. PAUL, MINN.; WASHINGTON, D.C.

HEAD OFFICE: 2000 NEW STREET, NEW YORK, N.Y. 10001

Delivered out of Jaf

*41.4.58.2**

DEFENDANTS' EXHIBIT 65

Document No. MEN-9-446 (4 pages)

Description of Document:**Salesman's Call Report****Date:****March 9, 1961****Addressed to:****Sales Manager,
Fernandina Plant,
Container Corporation****Written by:****R. Ward,
Package Engineer,
Fernandina Plant,
Container Corporation****Other Data:*****Typed copy of call report is attached.****Handwritten notation at top of the call report reads:
"Ask Si to requote 3-16-61, WLC"****The initials "WLC" refer to W. L. Cargal, Assistant
Sales Manager, Fernandina Plant, Container Corpora-
tion. "Si" refers to "Si" Cobb who was employed in
the sales service office of the Fernandina Plant, Con-
tainer Corporation.****"U/Bag" and "Union" refer to Union-Camp.****Exhibit Text**

* For handwritten text of exhibit, see page 65-3, infra.

Ask Si to Requote 3-16-61, info

Mon 9-44/6

X. Ward

3/9/61

Ref. 2.651

L. Butler Apparels

Norm Stephenson

I submitted wardrobe samples to Norm which he liked very much. Norm's brother is the mgr of Apparelscraft Inc. in Wrightsville, Ga and they plan to combine their purchasing thru L. Butler. All purchases will be shipped to L. Butler and their trucks will take containers to Wrightsville. I submitted a quote to Norm on several sizes one of which was an L30 25 1/4 x 15 x 20, 350 * CF taped plain. Our price was

612.40/m for 2M compared to 556.50/m for 2M.

submitted by U/Bay. Union has not submitted a quote on our Wardrobe container, which will be used primarily by the Wrightsville, Ga plant. Normans thinking is that we will be high on this too. Norm wants to buy from me, but he said he could not afford to if this must price differential exist. I did not see U/Bays quote but I definitely do not believe that Norm would lie about this matter because our relationship has been tops. Since his production is definitely increasing and getting better this

Volume should be #8 to #10M, in year between the two Accts?

Can we be competitive with this situation?

ALB

P.S. His brother in La has used the size shown above and was invoiced at the price of 558.50/m. Our quote to L. Butler Agency is dated 3/1/61 and the 5th item is the one in question at this time.

Ref. Ex. 65-2

Mon-7-443

Date 3/9/61Salesman: R. WardA. Company L. Butler Apparell, Called on Norm StephensonB. Presented on this call: Quotation _____ Sample ☒

Art work _____ Routine call _____ Results of call,

Comments and recommendations: I submitted wardrobe sample to Norm which he liked very much. Norms, brother is the mgr of Apparellcraft Inc. in Wrightsville, Ga and they plan to combine their purchasing thru L. Butler. All purchases will be shipped to L. Butler and their truck will take containers to Wrightsville. I submitted a quote to Norm on several sizes one of which was an RSC 25 3/4 x 15 x 20, 350 #C/F taped plain. Our price was 612.40/M for 2M compared to 556.50 /M for 2M submitted by U/Bag. Union has not submitted a quote and our wardrobe container, which will be used primarily by the Wrightsville, Ga. plant. Norm's thinking is that we will be high on this too. Norm wants to buy from me, but he said he could not afford to if this much price differential exist. I did not see U/Bags quote but I definitely do not believe that Norm would lie about this matter because our relationship has been tops. Since his production is definitely increasing and getting better, this volume should be \$8 to \$10M per year between the two accts?

Can we be competitive with this situation?


RBW

P.S. His brother in Ga has used the size shown above and

cl. E. 65-3

DEFENDANTS' EXHIBIT 65

Continued

Continued Exhibit Text 

was invoiced at the price of 556.50/M. Our quote to L. Butler Apparell is dated 3/1/61 and the 5th item is the one in question at this time.

Ref. 4. 65-4*

DEFENDANTS' EXHIBIT 67

Document No. MEN-10(A)-3 (2 pages)

Description of Document:

Memorandum of Business Lost

Date:

Fall of 1961

Addressed to:

Unaddressed

Written by:

A. S. Clay,
Sales Manager,
Winston-Salem Plant
Container Corporation

Other Data:

Handwritten notations on bottom of first page were made by A. S. Clay and read:

"add 2/5/62

"Carolina Mills—Maiden approx 65,000 M sq ft./month

"Troutman Shirt—Troutman, Mooresville, Sparta, approx 100 M sq ft./month"

The terms "12.35 plus 25.00 level," "13.00 plus 25.00 level," and "11.70 plus 15.00 level" refer to the area charge or board level equivalent (\$12.35, \$13.00, and \$11.70 respectively) per 1,000 square feet for 200 pound test single wall container board plus a set-up charge (\$25.00, \$25.00, and \$15.00 respectively). The term "12.35 plus 25.00 minus 10% off bottom level" means the area charge or board level equivalent of \$12.35 per 1,000 square feet for 200 pound test single wall container board plus a set-up charge of \$25.00, less 10%.

"Richmond Container" refers to Albemarle.

Exhibit Text

* For handwritten portion of text, see "Other Data" above.

BUSINESS LOST BECAUSE OF SEPTEMBER 1ST PRICE INCREASE

Carolina Mirror, North Wilkesboro, N. C. - Approximately 800,000 square feet per month

Prices were increased to 12.35 plus 25.00 level September 1st. Mead Corporation and Richmond Container continued to sell boxes to this firm at approximately 75 below our level. As a result, we have lost all volume in this account and have shipped no boxes since September.

Piedmont Carton Company, Charlotte, N. C. - Approximately 35,000 square feet per month

We raised prices effective September 1st approximately 10% to a 13.00 plus 25.00 level. Since that time all orders have gone to International Paper Company or Mead Corporation at prices reported to be lower than ours.

Dixie Furniture Company, Lexington, N. C. - Approximately 125,000 square feet per month

We raised prices in this account to the 12.35 plus 25.00 level effective September 1, 1961. The other suppliers - including Carolina Container, Union Bag, and Tri-State Container - are reported by the buyer as continuing to ship at the old prices which are up to 20% below our present prices. As a result, we have lost all volume in this account and have shipped no boxes since September, 1961. The prices in effect before September 1st work back to approximately 25% red.

Washington Mills Company, Winston-Salem, N. C. - Approximately 75,000 square feet per month

Our prices were increased 10% effective September 1st. All of this business is reported to be going to Richmond Container at a level well below our current 12.35 plus 25.00 level.


Forest Furniture Company, North Wilkesboro, N. C. - Approximately 85,000 square feet per month

On September 1, 1961, our prices were raised approximately 10% to the 11.70 plus 15.00 level. Dixie Container guaranteed prices around 10% below our level for the rest of 1961. It is our understanding that the buyer has been notified by Dixie Container of an increase to become effective January 1, 1962.

*Carlin Mills - North Wilkesboro, N.C. - 65,000 sq ft per month
Franklin - Forest Furniture, North Wilkesboro, N.C. - 100 sq ft per month
MEN 10/10-3*

DEFENDANTS' EXHIBIT 67

Continued

Continued Exhibit Text 

- Page 2 -

Marshville Box Company, Marshville, N. C. - Approximately 42,000 square feet per month

Prices were increased in this account 10% September 1, 1961. No orders have been received by us since September. We do not know who is shipping boxes to this firm at the present time.

Kimberly Yarn Mills, Charlotte, N. C. - Approximately 25,000 square feet per month

Our prices were increased 10% to a 13.00 plus 25.00 level September 1, 1961. At that time, Weyerhaeuser-Southern guaranteed a price lower than our old price and extended this guarantee until March 1, 1962.

Zarn, Inc., Reidsville, N. C. - Approximately 30,000 square feet per month

Our prices were increased to 12.35 plus 25.00 level September 1, 1961. Subsequent to this, Continental Can Company submitted prices approximately 15% below our level. Apparently the Continental Can prices are from a 'plastic bottle' price list.

Hadley-Peoples Manufacturing Company, Silër City, N. C. - Approximately 30,000 square feet per month

On September 1st, our prices were increased to a 13.00 plus 25.00 level from 12.35 plus 25.00 minus 10% off bottom level. Another supplier (Dixie, we think) guaranteed their prices at the old list for the remainder of 1961, and we have had no business since September 1st.

Copland Converting & Finishing Company, Burlington, N. C. - Approximately 40,000 square feet per month

On September 1st our prices were increased to a 13.00 plus 25.00 level. One of the other suppliers in this account guaranteed prices until the remainder of 1961, and we have received no additional orders.

Celanese Corporation, Rock Hill, S. C. - Approximately 25,000 square feet per month

Our prices were raised approximately 10% September 1st to the 11.70 plus 15.00 level. Other suppliers in this account accepted blanket orders for the remainder of 1961 at the old prices. We have received no business since September 1st.

Total reported in this letter - 1,312,000 square feet per month

ASC/cl

A. S. Clay

44/ E. 67-2
MEN 10(1) 3

DEFENDANTS' EXHIBIT 71

Document No. MEN-10(A)-19

Description of Document:

Letter from customer

Date:

June 21, 1961

Addressed to:

**Container Corporation of America
Fernandina Beach, Florida**

Written by:

**John H. Long, Assistant Purchasing Agent, Cannon
Mills**

Other Data:

[None.]

CANNON MILLS PURCHASING DEPARTMENT

C. H. BRY
PURCHASING AGENT



AGT. PURCHASING AGENTS
R. G. CLUTE
C. T. DAVIS
J. E. LOWE
G. A. WELLS, JR.

KANNAPOLIS, NORTH CAROLINA, U. S. A.

June 21, 1961

Container Corporation of America
Corrugated Container Division
Fernandina Beach, Florida

Gentlemen:

According to the Wall Street Journal of June 16th, there was a reduction of 10% on Kraft Linerboard.

We recently sent you a complete list of our "C" line of cartons, and we would like for you to figure up a new price list on these cartons, basing the prices on the new reduction that was announced.

Yours truly,

CANNON MILLS PURCHASING DEPARTMENT

John H. Long

Long/nc

cf. 71
MEN - 10A - 17

DEFENDANTS' EXHIBIT 72

Document No. RIC-59

Description of document:

Wall St. Journal Clipping and Sales Memo

Date:

November 22, 1955

Addressed to:

A. J. Bagley,
Richmond Container,
General Manager

Written by:

C. E. Stone,
Richmond Container,
Salesman

Other data:

RICHMOND CONTAINER CORPORATION
MEMORANDUM

To Mr. Toni Ragley
From C. B. Stone

Date November 22nd, 1955.

Dear Toni:

I am attaching clipping from the Wall Street Journal, dated November 22nd, 1955.

Looks like the big boys are certainly cutting them loose.

PRICE-CUTTING AN falls on corrugated paper shipping containers.

"The whole thing is senseless," says one manufacturer. "Demand never was better." But two big makers have precipitated the price-cutting in a battle for key markets and customers in the South, heart of the paperboard container manufacturing industry. Price repercussions are felt nationwide.

Corrugated shipping boxes, made from kraft paperboard, represent the biggest single product of the paperboard industry. They're used to ship thousands of products from fruits to TV sets to building materials.

While the container battle rages, paperboard producers defer a price rise on 48-pound board, most widely used in making boxes.

Ref. Ex. 72

DEFENDANTS' EXHIBIT 73

Document No. RIC-63

Description of document:

Two-page Salesman's report

Date:

April 9, 1958

Addressed to:

Maurice Dozier,
Richmond Container,
Sales Manager

Written by:

Edward P. Browder, Jr.,
Richmond Container,
Salesman

Other data:

RICHMOND CONTAINER CORPORATION

INC. 1.3

MEMORANDUM

To DOZIER

Date 4/9/58

From BROWDER

I HAD ORIGINALLY PLANNED TO WORK A COUPLE DAYS IN GREENVILLE HOWEVER AFTER TALKING TO SEVERAL OF THE ACCOUNTS AND ALSO BILL RAY, OLD DOMINIONS SALESMAN IN THAT AREA, I BELIEVE I WOULD JUST BE SPINNING MY WHEELS AT THE PRESENT.


GAYLORD, OF COURSE, IS VERY STRONGLY ENTRENCHED AND IS THE PRIME SUPPLIER FOR A GREAT MANY OF THE ACCOUNTS. IN ADDITION, THERE ARE SOME 13 OR 14 CORRUGATED SALESMEN LIVING IN GREENVILLE AND THEY ARE ALL WORKING THE ACCOUNTS HEAVILY, EVERY WEEK OR 2, WHEREAS I WOULD ONLY BE ABLE TO GET DOWN THERE EVERY 6 OR 8 WEEKS OR SO. ALL OF THE MAJOR ACCOUNTS ARE OFF THE MANUAL AND MANY OF THEM ARE ON CONTRACT. PRICE STRUCTURE VERY UNSETTLED AND

OUIR →

4.8.73-1

DEFENDANTS' EXHIBIT 73

Continued

Continued Exhibit Text 

OLD COMMISSION, TRYING TO OPERATE ON THE MANUAL, IS
JUST ABOUT OUT OF BUSINESS IN THAT AREA. MEAD IS
PARTICULARLY ACTIVE AND SEEMS TO BE ONE
OF THE BIGGEST PRICE CUTTERS.

ALL IN ALL, I THINK THAT IF WE WERE TO GET ANY
SUBSTANTIAL VOLUME IN THIS AREA IT WOULD BE
NECESSARY TO HAVE A LOCAL MAN WORK THAT AREA.

RECEIVED CONTAINER CORP.

RECEIVED
APR 15 1958

NOT FOR CIRCULARS COLLECTION

4/24/58

DEFENDANTS' EXHIBIT 74

Document No. RIC-71

Description of document:

Two-page Salesman's report

Date:

May 26, 1956

Addressed to:A. J. Bagley,
Richmond Container,
General Manager**Written by:**C. E. Stone,
Richmond Container,
Salesman**Other data:**"Jono" refers to Jehan B. Johnson
of Richmond Container's Sales Department

RICHMOND CONTAINER CORPORATION
MEMORANDUM

RIC. 71

To : J. D. Bailey
From : Curtis E. Stone

Date : May 26th. 1956.

Dear Toni:

I have your letter of May 22nd. and replying, agree with you that my business has been very poor this year and there is only one thing that I can contribute this to is our price disadvantage in this section.

If you will refer to the many reports I have sent in, regarding the accounts we use to sell and have lost for no other reason than price, you will agree with me that I have been at big disadvantage in securing business, and I will be frank and state that your co-operation, price-wise, has not been very encouraging.


In this box game that, as you know, I have been in for many years, you have to do some Horse Trading, so to speak and your prices have to be flexible, give a little here and there and take more profit where we can get it. Set prices, take it or leave it, is not very conducive in securing box business.

Referring further to our present price structure, there are numerous accounts that we have lost on price and nothing else. Competitors prices to some of these accounts, were lower than we could possibly take the business without losing money and I appreciate this fact. however, it takes the business away from us, which fact we cannot deny.

A listing on next page the numerous accounts we have lost on price and price alone.

DEFENDANTS' EXHIBIT 74

Continued

Continued Exhibit Text 

RICHMOND CONTAINER CORPORATION

MEMORANDUM

Sheet # 2.

To Mr. A. J. Bagley

Date 5/26/56

From

Aerotron Corp.	
Cannon Mills	
Commonwealth Hosiery Mills	Buying at same price they did last year
Sant Hill Furniture Corp.	
Spry Cotton Mills	
Pennill Knitting	
Sanville Knitting Mills	Last two orders quoted on.
Blue Gem Manufacturing Co.	
Cooland Converting & Finishing	Lost last order they placed. Information attaches.
Vick Chemical Co.	

There are other accounts that we could have gotten business from had our prices been in line.

I called on Core Mills this week and Ed. Chambers told me that none of their suppliers had advanced their price and had stopped talking about advances. He said that they are paying the same prices they paid last year. There has been no increases in prices.

If you have read the many reports I have sent to Jeno, and I know you have, you must fully understand our situation and why we are not getting much business.

I don't want you to interpret this letter as an excuse for not getting business on my part, as this information I am giving you is a FACT.

11/11/56 474-23

DEFENDANTS' EXHIBIT 86

Document No. CAR-142

Description of document:**Memo****Date:****July 20, 1961****Addressed to:****Ed T. (Ed B. Totty), Sales Representative for Carolina Container Company.****Written by:****Carter (Carter T. Holbrook), Sales Manager for Carolina Container Company.****Other data:****"He placed order" means purchasing agent of Long Manufacturing Company (subject of memo) placed order.**

CAR. - 142

7/20/61

To: Ed T.

Re: Long Mfg. Co., Petersburg, Va.

Thank you very much for forwarding to us the competition prices on the above order. I actually see no rhyme or reason for the prices which were submitted. The difference between the 5000 and 10,000 lots indicated that everyone used a different set up and he placed the order with Richmond at about 19% below our prices.

We appreciate your getting this info for us and we hope that we'll be in position to make a bid when the customer is next in the market.

CARTER
ethics

dy. E. 86

DEFENDANTS' EXHIBIT 87

Document No. CAR-157

Description of document:

Purchase Order

Date:

July 25, 1961

Addressed to:

Carolina Container Company

Written by:

Metal Fabricators, Inc. of Charlotte, North Carolina,
Mr. Hugh S. Barnes

Other data:

Note, "These prices are competitor's—if you do not want to accept at these prices please return or advise." HSB means as stated if Carolina Container Company does not wish to accept this order at prices shown they are to advise Mr. Barnes.

—7% means prices Mr. Barnes shows on Metal Fabricators' order are 7% below prices Carolina Container Company had been charging.

50 $\frac{3}{4}$ means width of the sheet to be run off corrugator in preparation of this order and was written by Carolina Container Company production clerk.

16/16 means this size is produced from 200 pound single wall container board made from liners caliper-ing .016/.016. 69 $\frac{3}{4}$ and 16/16 means the same thing.

10-26 means date the order was delivered and was written by Carolina Container invoice clerk. 9-20 means the same thing.

1700 and 1000 mean lineal footage of container board required to produce this order. This was written by Carolina Container Company estimator.

3700-01 means Carolina Container Company's factory production order numbers. Written by Carolina Container Company order clerk.

7-27 means date order was acknowledged by Carolina Container Company acknowledgment clerk.

CAR.-157

PURCHASE ORDER

METAL FABRICATORS, INC.

2923 S. GRIFFITH ST. P. O. BOX 3232 PHONE EDISON 4-9020
CHARLOTTE 3, NORTH CAROLINA

No 646

TO Carolina Container Company
Box 1191,
High Point, N. C.

DATE July 25, 1961

SHIP TO Us

VIA

Best way



NOTICE: PACKING SLIP SHOWING CONTENTS OF EACH PACKAGE MUST ACCOMPANY SHIPMENT

50 3/4 16 1/4 10-26 200 ea. 9-E 22 1/2 x 22 1/2 x 27 1/2 R.S.C. 200# Test printing -1P20
at \$1 \$567.95/M
69 3/4 16 1/4 9-20 300 ea. 7 & 8" pipe 9 x 9 x 50 R.S.C. 200# Test printing -1P20
at \$381.45/M

NOTE: HOLD FOR RELEASE

Note: These prices are competitive.
if you do not want to accept
it these prices please return
in advise
HOB

3700-01

7-27

JUL 26 1961

Acknowledge receipt and acceptance of this order promptly.
We reserve the right to cancel order if terms and shipments
are not made as agreed.

METAL FABRICATORS, INC.

High S. Barnes

DEFENDANTS' EXHIBIT 93

Document No. CAR-187

Description of document:

Price Comparison

Date:

January 21, 1961

Addressed to:

Written by:

Fred Woodson, Carolina Container Company's sales representative copied this from a quotation of Miller Container Corporation dated January 29, 1960. James Largen, purchasing agent of Paul Knitting Company, gave the Miller Container Corporation's quote to Mr. Woodson to copy. All comments are made by Fred Woodson.

Other data:*

"Miller" means Miller Container Corporation of Roanoke, Virginia.

Exhibit Text

* Handwritten text of note on exhibit is as follows:

"Copy of 11-29-60 Miller quotation for 500 lots. Buyer had a list which compared our 500 lot prices & Mil. & it seems that Mil. had us beat on price & is scheduled to get 100% of the business. There is a chance that the buyer can talk his boss into splitting the business with us if we send him revised prices. Buyer actually likes our quality better, and I believe could get his boss to change before its too late."

Paul K. Ty Miller
Paul K. Ty Miller
CAR. 187

DATE 7-12-61

2/24/93

LINE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	TOTAL
500 LOTS (2nd piece)															
SB	\$ 85.90		RSC	150 #	2" x 1/2"		Plain								
B	106.85		2" OL												
B	159.70		2" OL	175 #											
B	145.90		2" OL	175 #											
8B	145.70		2" OL	175 #											
10B	161.30		2" OL	175 #											
W	200.85		2" OL	175 #											
L	222.15		2" OL	175 #											
B	190.05		2" OL	175 #											
L	297.65		2" OL	200 #											
B	271.80		2" OL	200 #											
B	491.55		2" OL	275 #	3" x 1/2"										
OM	614.10		2" OL	275 #	3" x 1/2"										
OL	692.85		2" OL	275 #	3" x 1/2"										
OM	946.85		RSC	275 #	3" x 1/2"										

if possible
Please
note on
these spec
only.

Copy of 11-29-60 Miller quotation for
500 lots.

Buyer had a test which compared our 500 lot price
+ mill. & it seems that mill had no test on
price & is scheduled to get 100% of the
business. There is a chance that the buyer can
talk his boss into splitting the business, unless
we if we send him revised prices. Buyer
actually likes our quality better & I believe could
get it less to change above its too late.

DEFENDANTS' EXHIBIT 95

Document No. CAR-269

Description of document:

Letter

Date:

May 27, 1961

Addressed to:

Carolina Container Company of High Point, North Carolina, Arnold J. Koonce, Jr., Sales Representative for Carolina Container Company.

Written by:

Waverly Mills, Laurinburg, North Carolina, George Everington, Assistant Secretary.

[Other data:]

None.]

Exhibit Text*** Body of text of Exhibit is as follows:**

"Dear Arnold:

"With further reference to our discussion relative to carton prices, I believe I told you that Carolina was about 3½% off the lowest quotation given us out of the eight suppliers we requested quotations from.

"In checking a little closer after you left, I inadvertently gave you the wrong figure. Carolina is more nearly 7½% higher than our lowest quotation. This quotation is from a supplier that we normally buy from and not one simply making a price to buy himself in.

"I am sorry I gave you the wrong figure and will talk to you about it on your next trip".

CAR.-1269

WAVERLY MILLS, INCORPORATED

MANUFACTURERS OF

Premium Yarns
Cottons - Rayons and Blends
 LAURINBURG, N. C.

May 27, 1961

Carolina Container Company
 High Point
 North Carolina

Attention: Mr. Arnold J. Koonce, Jr.

Dear Arnold:

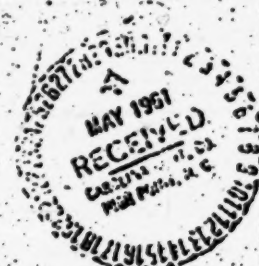
With further reference to our discussion relative to carton prices, I believe I told you that Carolina was about $3\frac{1}{2}\%$ off the lowest quotation given us out of the eight suppliers we requested quotations from.

In checking a little closer after you left, I inadvertently gave you the wrong figure. Carolina is now nearly $7\frac{1}{2}\%$ higher than our lowest quotation. This quotation is from a supplier that we normally buy from and not one simply making a price to buy himself in.

I am sorry I gave you the wrong figure and will talk to you about it on your next trip.

Very truly yours,

cm/sfc



127 4-95

DEFENDANTS' EXHIBIT 98

Document No. CAR-287

Description of documents:

Letter

Date:

July 15, 1960

Addressed to:

Carolina Container Company, High Point, North Carolina.

Written by:

Erwin Mills, Inc., Durham, North Carolina, J. T. Holt, purchasing agent.

Other data:

Pencil note written by Carter Holbrook, Carolina Container Company Sales Manager.

Note, "Jack Holt Advised 7/25/60" means Carter Holbrook advised Jack Holt of Erwin Mills that Carolina Container Company would agree to sell at prices Mr. Holt mentions in the letter.

"Cards" was written by Carter Holbrook and is instructions to secretary to bring Erwin Mills's price cards to his office.

"Less 10%" is a pencil note of 10% mentioned in Mr. Holt's letter.

CAR.-287-



ERWIN MILLS, INC.

FOUNDED 1904

DURHAM, NORTH CAROLINA

July 15, 1960

Carolina Container Company
High Point, N. C.

Gentlemen:


I am being offered cartons, similar to the ones for Erwin, N. C., on the basis of 12.35 less 10% on 200 lb. test board. I believe this figure is out at approximately 16.60 less 10% on 275 lb. test board.

Please let me know whether or not your company would be willing to go along with the same offer. Since this offer is made on the cartons at Erwin, I am asking the other suppliers the same question and my reason for this action is that I feel you should be given an opportunity to meet competition.

Kindest regards.

Yours very truly,

ERWIN MILLS, INC.


Purchasing Agent

JTH/mls

Jack Holt
advised
7/25/60

Less 10%

of El. 98

DEFENDANTS' EXHIBIT 100

Document No. CAR-290

Description of document:

Letter

Date:

July 26, 1960

Addressed to:

Carolina Container Company, High Point, North
Carolina, Arnold Koonce, Sales Representative.

Written by:

Hamer Spinning Mills, Hamer, South Carolina,
Jerry Madans.

[Other data:

None.]

CAR.-290

THE HAMER SPINNING MILLS
DIVISION OF MACANAL TEXTILE CORPORATION
HAMER, S. C.

July 26, 1960



Carolina Container Company
High Point, N. C.

Att: Mr. Arnold Koonce

Dear Arnold:

We refer to the sample that you made for us about July 12th that was shipped to Hamer Spinning Mills. The size of the sample was as follows:

Length 52" Width 19½" Depth 26½"
4" Overlap
350 Test 90/90 @ 1224.35 Per M

We would like another sample made with the overlap changed from 4" to 5" and the test from 90/90 to 90/69. The carton should weigh approximately 11 lbs. 4 oz, so we may adjust our tare accordingly.

One of your competitors submitted a sample carton that we are planning to use at Macanal with the above specifications, and the price is approximately \$90.00 per thousand less than yours. We trust your quotation will be competitive.

Very truly yours,

THE HAMER SPINNING MILLS

Jerry Madana
Jerry Madana

JH/rb

Ref. E. 100

DEFENDANTS' EXHIBIT 101**Document No. CAR-294****Description of document:****Letter****Date:****September 2, 1960****Addressed to:****Hank Abernethy, Sales Representative for Carolina
Container Company, High Point, North Carolina****Written by:****The Hadley Corporation, Weaverville, North Carolina,
Don Roberts, purchasing agent**

CAR.-1294

Hadley

THE HADLEY CORPORATION

WEAVERVILLE, NORTH CAROLINA

September 2, 1960



Hank Abernethy
Carolina Container Corp.
High Point, N. C.

Dear Mr. Abernethy:

Re your invoice #07005 concerning the S-2 cartons which the price of is \$667.95 per thousand. The Union Bag Camp Paper Corporation price of the same carton is \$627.95 per thousand.

Please be advised that this is one of the things that we talked about in our conversation of September 1.

Please advise.

Sincerely,

THE HADLEY CORPORATION

Don Roberts

Don Roberts

DR/er

Ref. E.L. 101

DEFENDANTS' EXHIBIT 105

Document No. CAR-365

Description of document:

Letter

Date:

June 24, 1958

Addressed to:

Carolina Container Company, High Point, North
Carolina

Written by:

Erwin Mills, Inc., Durham, North Carolina, J. T.
Holt, purchasing agent.

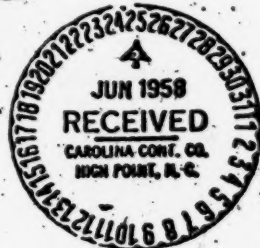
CAR.- 365

ERWIN MILLS, INC.

FOUNDED 1898

DURHAM, NORTH CAROLINA

June 24th, 1958

A. T. HOLY
PURCHASING AGENT

Carolina Container Company
High Point, N. C.

Gentlemen:

You are doubtless aware of the fluctuations in the prices on cartons. Quite frankly, we are offered prices that are considerably under the ones we are presently paying you, but thought it best to give you an opportunity to meet competition.

Suggest you revise your prices covering cartons you are presently delivering to Erwin and let us have best price you are able to offer us at this time.

Yours very truly,

ERWIN MILLS, INC.

Purchasing Agent

JTH/mls

Jy 24 1958

DEFENDANTS' EXHIBIT 113

Document No. CAR-426

Description of document:
Salesman's Report

Date:
February 7, 1962

Addressed to:
Carolina Container Company, High Point, North
Carolina.

Written by:
Fred Woodson, Sales Representative, Carolina Con-
tainer Company.

Other data:

"Wey" means Weyerhaeuser Company.

"Rich" means Richmond Container Company, now
known as Albemarle Paper Manufacturing Company.

"HC" means Highland Container Company, now
known as Union Bag-Camp Paper Corporation.

FIRM Appomattox Garment Co. DATE 2-7-62

LOCATION Appomattox BUYER Jim Cobb

REMARKS

Buyer said out of 10 co's only 1 co. was higher than we were
& the rest were lower. Most of them were only \$3. or \$4. lower
than our prices, but the 3 lowest co's were Rich-Wey-HC. One of
these was about \$39.04 lower and another was about \$31.62 lower
than our prices on the #362 carton.

OUR LAST ORDER.	BUYING FROM	Wey.	SALESMAN MAKING CALL	Fred
--------------------	----------------	------	-------------------------	------

Qty EL 113

DEFENDANTS' EXHIBIT 114

Document No. CAR-431

Description of document:

Salesman's report

Date:

February 16, 1962

Addressed to:

Carolina Container Company, High Point, North Carolina.

Written by:

Fred Woodson, Sales Representative, Carolina Container Company.

Other data:

"Rich" means Richmond Container Company, now known as Albemarle Paper Manufacturing Company.

"TS" means Tri State Container Corporation.

"FB" means Fibreboard Container Company, now known as Continental Can Company.

"H&D" means Hinde & Dauche Division of West Virginia Pulp and Paper Company.

FIRM Danville Ktg. Mills DATE 2-16-62

LOCATION Danville BUYER Moss

REMARKS

Buyer said \$660.00 was the lowest price on their H ctns. &
we were next the lowest. The highest price was about \$860.00.

OUR
LAST ORDERBUYING
FROM

Rich-TS-FB-H&D

SALESMAN
MAKING CALL

Fred

Def. 2. 114

DEFENDANTS' EXHIBIT 122

Document No. CAR-1305

Description of document:

Bid No. 62072

Date:

January 18, 1962

Addressed to:

Written by:

State of North Carolina,
Purchase and Contract Division,
Raleigh, North Carolina.

Other data:

This list of bids for State contract was prepared by the State of North Carolina, Purchase and Contract Division, Raleigh, North Carolina and made available to anyone wanting a copy.

None of the notes shown were written by any of Carolina Container Company employees, but is exactly as prepared by the State.

"Error Confirmed by Phone 1-18-62 by Mr. Holt" was a part of this document when furnished by the State Purchase & Contract Division to Carolina Container Company.

DEFENDANTS' EXHIBIT 127

U. S. v. Container Corporation et al.
Document No. CAR-1316

Description of document:

Bid #61091

Date:

January 27, 1962

Addressed to: [None]

Written by:

State of North Carolina, Purchase and Contract Division, Raleigh, North Carolina.

Other data:

This list of bids was prepared by the State of North Carolina, Purchase and Contract Division, and made available to anyone wanting a copy.

None of the notes on this document were written by an employee of Carolina Container Company.

DEFENDANTS' EXHIBIT 135

Document No. CCC-2861-62

Description of document:**Monthly Activities & Progress Report****Date:****February 21, 1961****Addressed to:****Robert Groner, Jr.,
General Manager,
Southern District,
Corrugated Container Division,
Continental Can Company****Written by:****William B. Beams,
District Sales Manager,
Martinsville, Va. plant
Corrugated Container Division,
Continental Can Company****Other data:****Copies to W. Duane Arbuthnot,
Manager of Sales,
Corrugated Container Division,
Continental Can Company;****Don G. Thomas,
Sales Manager—National Accounts,
Corrugated Container Division,
Continental Can Company;****Richard W. Everett,
Assistant Manager, Sales Control Department,
Continental Can Company****Exhibit Text**

Robert Groner, Jr.
524 Richmond

W. B. Beams
613 Martinsville
February 21, 1961

Monthly Activities & Progress Report - 613 Martinsville
JANUARY 1961

1. Gross Sales to Trade

<u>1960</u>		<u>1961</u>	
<u>Budget</u>	<u>Actual</u>	<u>Budget</u>	<u>Actual</u>
293.0	278.0	295.0	284.8
94.9%			

Gross Return Per Ton (Trade)

<u>1960</u>		<u>1961</u>	
<u>Shipped</u>	<u>Return</u>	<u>Shipped</u>	<u>Return</u>
1175	236.63	1207	235.77

Gross Return Per H Sq. Ft. (Trade)

<u>1960</u>		<u>1961</u>	
<u>Shipped</u>	<u>Return</u>	<u>Shipped</u>	<u>Return</u>
15,237	18.25	15,175	18.77
av. wt. basis 162#		av. wt. basis 159.2#	

2. New Business

One new account in January. This was Zarn, Inc. of Reidsville, N.C. This is a plastic bottle manufacturing company, a new business, and our initial order was \$585.50. We hope to get 100% of this and as they grow, so will our sales.

3. Competition

We have had modification of several of our customers who have been offered reduced prices since January 1, 1961. In all cases we have so far maintained or gained position in these accounts by downward price adjustments.

Examples:

Pulaski Vencer & Furniture - cut by Dixie - we adjusted and have been promised 90% of Pulaski business and 100% of Martinsville business. This should give us \$30,000 plus additional business in 1961.

American Thread, Sevier, N.C. - cut by Inland 5-1/2%. They received no business. We maintained our 25% position by meeting price. I presume Tri-State and Union did likewise.

Mt. Hope Finishing Co. Mt. Hope, N.C. - prices were cut by Carolina 10%. We were placed in bad position by this and had to go 12-1/2% to maintain our position. Indications are that we will gain.

Ref. Ex. 135-1

DEFENDANTS' EXHIBIT 135

Continued

Continued Exhibit Text 135

Robert Groner, Jr.

W. B. Beams

February 21, 1961

Progress Report - January 1961 cont'd

Other reductions in sizable accounts have been reported as of 2-20-61 and are being negotiated or investigated. Will report final action on February report.

4. Business Gained or Lost

- (a) Bassett Sales - January - \$57,192.
- (b) Gain \$30,000 annually Pulaski Veneer & Furniture
- (c) Gain \$20,000 annually Burlington Industries (re-entry)

5. Forecast for February

In spite of several North Carolina accounts, particularly furniture, working 50% to 75% of capacity our back-log is sizable and better than average. We should meet plant sales budget in February.

6. Major Prospects

- (a) New - Housatonic Container - sheet plant at Newton, N.C., within a few months. We have contacts locally and in Connecticut.
- (b) Old - Have not yet had time to appraise accounts presented by salesmen for planned concentration. Have sizable lists from all.

7. Miscellaneous

Rumors continue to grow stronger that I.P. will build a plant in Statesville, N.C. soon.

Housatonic will build a sheet plant in Newton, N.C.

Further price cutting imminent if volume does not improve in area at once.

W. B. Beams

WBB:rw

cc:

W. D. Arbuthnot 39

D. G. Thomas 641

R. W. Everett 43

File

44-38861-100
 FEB 24 1961
 FBI - MEMPHIS
 110

Ref. Ex. 135-22

DEFENDANTS' EXHIBIT 136**Document No. CCC-2867-68****Description of document:****Monthly Activities & Progress Report****Date:****March 28, 1961****Addressed to:****Robert Groner, Jr.,
General Manager, Southern District,
Corrugated Container Division,
Continental Can Company****Written by:****William B. Beams,
District Sales Manager,
Martinsville, Va. plant
Corrugated Container Division,
Continental Can Company****Other data:****Copies to W. Duane Arbuthnot,
Manager of Sales,
Corrugated Container Division,
Continental Can Company;****Don G. Thomas,
Sales Manager—National Accounts,
Corrugated Container Division,
Continental Can Company;****Richard W. Everett,
Assistant Manager,
Sales Control Department,
Continental Can Company**

CONTINENTAL CAN COMPANY, INC.



INTERNAL CORRESPONDENCE

CCC-2867

TO:	Robert Groner, Jr.	FROM:	W. E. Beams
LOCATION:	524 Richmond	LOCATION:	613 Martinsville
ATTENTION:		DATE:	March 28, 1961

SUBJECT: Monthly Activities & Progress Report - 613 Martinsville
FEBRUARY 1961

REFER TO:

1. Gross Sales to Trade

1960		1961	
Budget	Actual	Budget	Actual
292,000	286,000	290,000	320,437
98.0%		110.5%	

Gross Return Per Ton (Trade)

1960		1961	
Shipped	Return	Shipped	Return
1204	237.79	1345	237.88

Gross Return Per M Sq. Ft. (Trade)

1960		1961	
Shipped	Return	Shipped	Return
15,138	18.91	16,835	19.02
Av. Wt. Basis 159.1#		Av. Wt. Basis 159.7#	

2. New Business

Three new accounts in February - two of which have good volume potential

Account	Location	Initial Order
A. J. Schnelerson	Siler City, N.C.	\$ 524.95
Roanoke Chemical Co.	Salem, Va.	235.00
Morton Mfg. Co.	Lynchburg, Va.	\$4921.50

The Morton Mfg. Company account was at one time our account 100%. We believe that our quality and service will move out the Baltimore competition and should develop into \$25,000 or more annually.


3. Competition

The price trend continues downward in practically wholesale quantities of accounts. The competition reduces prices from 5% to 15% anywhere volume is available. There is no pattern and the reductions are too numerous to be specific. The worst offenders as to size and number of reductions are Moyerhauser, Union Bag and Inland of the integrated companies and Richmond and Dixie of the independents.

WJ & 136-1

DEFENDANTS' EXHIBIT 136

-Continued

Continued Exhibit Text 

CONTINENTAL CAN COMPANY, INC.

INTERNAL CORRESPONDENCE

TO: Robert Groner, Jr.
524 Richmond

FROM: V. B. Seams
LOCATION: 613 Martinsville

ATTENTION:

DATE: March 28, 1961

SUBJECT: Monthly Activities & Progress Report cont'd.

REFER TO:

4. Business Gained or Lost

- (a) Bassett Sales in February \$53,912.90.
- (b) No volume losses - some gross sales losses.
- (c) Sizable gain - Morton Mfg. Company (new account).

5. Forecast for March

Back log better than average. Our Plant Sales Budget \$320,000 and we expect to ship \$350,000 to \$360,000.

6. Major Prospects

- (a) Mid-State Tile Company, Lexington, N.C. has indicated much interest in our Conlite. Now using SnoBrite and apple white. We expect entries and good volume momentarily.
- (b) Expect to develop nice business in western North Carolina with A. H. Turner, Jr. Current good volume prospects are: Blowing Rock Furniture, Kent-Coffey, American Furniture Company.

7. We are pushing our new Conlite concertedely and expect fine results.

Price trend continues downward and may set new lows in the not too distant future, with more competitive plants planned in area and no major new volume in sight. Many textile and furniture plants working short time.

V. B. Seams
V. B. Seams

WBB:rw

cc:

W. B. Arbuthnot 39

D. G. Thomas 641

R. W. Everette 43

File

DEFENDANTS' EXHIBIT 137

Document No. CCC-2869-72

Description of document:

Monthly Progress Report

Date:

April 7, 1961

Addressed to:

Robert Groner, Jr.,
General Manager, Southern District,
Corrugated Container Division,
Continental Can Company

Written by:

Roy N. Taylor,
Acting District Sales Manager,
Atlanta, Ga. plant,
Corrugated Container Division,
Continental Can Company

Other data:

Copies to Clovis C. Viguerie, Assistant to General
Manager, Southern District, Corrugated Container
Division, Continental Can Company;

Richard W. Everett, Assistant Manager, Sales Control
Department, Continental Can Company;

W. Duane Arbuthnot, Manager of Sales, Corrugated
Container Division, Continental Can Company;

James I. Donohue, Special Sales Representative—
National Accounts, Corrugated Container Division,
Continental Can Company;

Don G. Thomas, Sales Manager—National Accounts,
Corrugated Container Division, Continental Can
Company;

John Anouilh, Jr., Plant Manager, Atlanta, Ga. plant,
Corrugated Container Division, Continental Can
Company.

The predecessor of William B. Beams referred to in
the Report was Benjamin F. Beeler.

C. W. Cooper, Jr., referred to in the Report was,
prior to February 1, 1961, a salesman, Atlanta, Ga.
plant, Corrugated Container Division, Continental
Can Company.

Earl Goodrich and Ted Pisarczuk referred to in the
Report were respectively Product Sales Manager and
New Product Development and Packaging Design
Engineer, Corrugated Container Division, Conti-
nental Can Company.

524 Richmond
H. Groner, Jr.

611 Atlanta
April 7, 1961

MONTHLY PROGRESS REPORT - March, 1961

1. Sales Figures - Performance against Budget -

	<u>1961</u>		<u>1960</u>	
	<u>Trade</u>	<u>Interplant</u>	<u>Trade</u>	<u>Interplant</u>
Actual	\$181,016.00	\$15,264.00	\$188,352.00	\$10,157.00
Budget	210,000.00	15,000.00		

We missed budget in March by 12.8%.

2. Performance against Quota -

	<u>SALESMEN</u>	<u>MARCH</u>	<u>HOUSE</u>
Actual	\$139,066.00		\$44,885.00
Quota	142,916.00		38,750.00
% Quota	97.3%		115.8%

	<u>SALESMEN</u>	<u>YEAR TO DATE</u>	<u>HOUSE</u>
Actual	\$433,587.00		\$87,108.00
Quota	428,748.00		116,230.00
% Quota	101.1%		74.9%

3. New Business -

The following new accounts were acquired in March, 1961:

OLIN-WATHLIESON CHEMICAL CORPORATION - East Point, Georgia

The first order of corrugated DDT Containers was placed here during the month. A trial shipment will be made during April to see if performance is satisfactory on these boxes.

The initial order amounted to some \$5,000.00.

147-137-1

C.C. - 2.8.70

R. Croner, Jr.

-2-

April 7, 1961

MONTHLY PROGRESS REPORT - March, 1961

KNOX GLASS COMPANY, INC. - Forest Park, Georgia

Our first shipments to Knox were made during the month of March.

The dollar volume for March, to this account, was \$19,752.00, and the square footage shipped was 1,614,970.

E-Z-CO-CAR CORPORATION - BRANCH OF TUCKER - Augusta, Georgia

We shipped our first order to this account, after being out as a supplier for two years.

ACCURATE PRINTERS - Atlanta, Georgia

FOUNTAIN ENGINEERS, INC. - Atlanta, Georgia

4. BUSINESS LOST DUE TO COMPETITIVE ACTION:

U. S. Rubber Company - Atlanta, Ga., Loganville, Ga. and Miami, Florida

The dollar volume for 1960 was \$11,500.00.

This business is put out on a bid basis each quarter. As of now, I am not sure which company took our portion of the business due to a lower quoted price, but I will find out shortly. We have hopes that we will regain our position next quarter.

Spencer Adams Paint Company - Atlanta, Georgia

We have lost our position here for six months, after having this account 100% for five years. Gaylord reduced our prices and will have the business during the next six months period. We hope to re-enter this picture at the end of six months.

Peter Pan Baking Company - Atlanta, Georgia

This business was lost for at least a six month period due to competitive action by Mead-Atlanta Paper.

Volume will run around \$20,000.00 per year and, here again, we hope to regain our position at the end of six months.

47 24.1372

CCC-2871

R. Croner, Jr.

-3-

April 7, 1961

MONTHLY PROGRESS REPORT - March, 1961

5. Competition -

I feel that it can be seen from the above accounts lost that the market is extremely soft and it would appear that most of our competitors are seeking volume at all costs.

We are attempting to stay as close to our accounts as possible, in order to head off or meet price concessions which are being offered rather freely at this time.

We have high hopes that business will increase during the coming months and that there will be some firming of prices in this market.

All textile business which is being placed on a bid basis in this area is going at an extremely low level, with most corrugated users in this field attempting to get commitments of six months or more at the ridiculous prices being offered.

I feel that it should be pointed out here that my predecessor is now selling for St. Joe Paper Company, Port St. Joe, Florida, and he is based here in Atlanta.

Also, C. W. Cooper, who is no longer with our company as of February 1, 1961, is with a local sheet plant, Martin & Laufer.

As yet, we have felt no effects from the above run, as far as our customers go, other than Cooper's close relationship with Murray Biscuit Company.

6. Major Prospects -

W. L. Jackson Manufacturing Company, Chattanooga, Tennessee

Karl Goodrich and Ted Ficarelli are making a concerted effort to get this project wrapped up and to get a workable sample in this account.

It is my feeling that this experimental work here has progressed entirely too slow and that we will have to get behind this with all possible speed, if we are to attain any success in this account.

Calanese Corporation - Rome, Georgia


This is a large Caylor account and we appear to be making headway here toward getting our first order.

The volume in this account runs around \$100,000.00 per year.

WJ EL 137-3
1

DEFENDANTS' EXHIBIT 137

Continued

Continued Exhibit Text 

CCC-2872

259

R. Groner, Jr.

-4-

April 7, 1961

MONTHLY PROGRESS REPORT - March, 1961

Crystal Springs Bleachery - Chickamauga, Georgia

We lost our portion of this business six months back due to competitive action and it appears we may be able to gain our position here within the next month.

Ercmann Doll Company - Columbia, South Carolina

This account is presently buying from northern suppliers and we feel that we may be able to get some portion of this business when they start purchasing locally.

Olin-Mathieson Chemical Corporation - East Point, Georgia

While we received our first trial order here, we feel that with a successful shipment overseas that this could possibly be a very good volume account for us. We will follow the results of the trial shipment very closely.

7. Forecast for April, 1961 -

Late March orders seem to indicate that there may be some pick up in business activity here in April.

As of now, I feel that our performance here in Atlanta will improve against both budget and quota.

There are still many soft spots in the economy of this area, but many accounts have allowed their inventories to be depleted and, with any small increase in business activity, I believe that we will feel immediately the results of this by way of increased business.

8. Quality Complaints -

Overall, quality complaints again ran very low in March. There were two minor complaints on printing, neither of which were serious.

There was also one minor complaint on the performance of our manufacturers joint which, again, was of minor importance.

9. Miscellaneous -

There were no personnel changes for the month of March.



Roy H. Taylor

RHT/ms

cc: C. C. Vignorie 615 H.O.

R. W. Everett 43 H.Y.

W. D. Arbuthnot 39 H.Y.

J. I. Donahue 39 H.Y.

D. G. Thomas 641 H.Y.

John Anouilh, Jr. 521 Atlanta

Ref. 82.324

DEFENDANTS' EXHIBIT 138**Document No. CCC-2876-77****Description of document:****Monthly Activities & Progress Report****Date:****April 21, 1961****Addressed to:****Robert Groner, Jr., General Manager, Southern District, Corrugated Container Division, Continental Can Company****Written by:****James C. Wall, Jr., Sales Service Supervisor, Richmond, Va. plant, Corrugated Container Division, Continental Can Company****Other data:**

Copies to W. Duane Arbuthnot, Manager of Sales, Corrugated Container Division, Continental Can Company; William B. Beams, District Sales Manager, Martinsville, Va. plant, Corrugated Container Division, Continental Can Company; James I. Donohue, Special Sales Representative—National Accounts, Corrugated Container Division, Continental Can Company; Albert B. Winterer, Manager of Customer Service and Box Development, Corrugated Container Division, Continental Can Company; Richard W. Everett, Assistant Manager, Sales Control Department, Continental Can Company.

Messrs. Charlton Root and Earl Goodrich referred to in the Report were respectively Manager of Research and Product Sales Manager and New Product Development, Corrugated Container Division, Continental Can Company.

524 Richmond

612 Richmond

Mr. R. Groner, Jr.

April 21, 1961

Monthly Activities & Progress Report - 612 Richmond - March 1961

1.

Gross Sales To Trade19601961

<u>Budget</u>	<u>Actual</u>
\$390,000	\$413,839

<u>Budget</u>	<u>Actual</u>
\$390,000	\$387,946

106.1% of Budget

102.1% of Budget

Gross Return Per Ton (All Sales)19601961

<u>Shipped</u>	<u>Return</u>
1620	\$255.43

<u>Shipped</u>	<u>Return</u>
1578	\$245.35

Gross Return Per M Sq. Ft. (All Sales)19601961

<u>Shipped</u>	<u>Return</u>
26,027,610	\$15.90

<u>Shipped</u>	<u>Return</u>
24,641,668	\$15.75

2. New BusinessSouthern School Supply - Raleigh, N. C.

Received initial order for \$100.00. Annual volume \$2500.00.

Hanover Packing Company - Hanover, Virginia

Sold this packer of fresh salads initial order for \$500.00. Should be sales of 7500 per year here.

3. Competition


Our competitors are very active and are still quoting low prices. We do not intend to lose any business due to price cutting by our competitors.

4. Business Gained or LostT. A. Cantwell & Company, Inc. - Washington, D. C.

10/ E. 138-1

DEFENDANTS' EXHIBIT 138

Continued

Continued Exhibit Text 

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Mr. R. Groner, Jr.

We lost a \$40,000.00 order for temporary letter cases to Lawrence Paper Company. Lawrence Paper Company had prices lower than ours and since our prices were quoted to government through our jobber we were not allowed to adjust our prices.

5. Prospects for April 1961

Based on past performance for year we should meet our budget of \$360,000.00.

6. Major Prospects

General Mower

We are still working this account and have been promised some orders. However, we have been working account for sometime and we are finding orders hard to come by.

7. Miscellaneous

It appears that we will regain Gwaltney, Inc. We lost this valued account for several months due to price and quality of our 339 medium. We have corrected both price and medium so we should expect orders soon. Our Messrs. Root and Goodrich made a survey of Gwaltney, Inc. for us and indications are that customer is well pleased with their survey.

We are feeling out the large apple growers in an attempt to make some early progress. Our goals are to sell the larger users more containers this year.

James C. Wall, Jr.

JCW JR:pd

CC: W. D. Arbuthnot #39 ✓
W. B. Beams #613
J. E. Donahue #39
A. B. Winterer #33
R. W. Everett #39

NOT RECORDED
MAY 24 1961
DECLINED

4. 138-2

DEFENDANTS' EXHIBIT 140

Document No. CCC-2883

Description of document:**Memorandum****Date:****May 26, 1961****Addressed to:****W. Duane Arbuthnot, Manager of Sales,
Corrugated Container Division,
Continental Can Company****Written by:****Robert Groner, Jr., General Manager, Southern District,
Corrugated Container Division, Continental Can
Company****Other data:****Copy to Lewis B. Pitts, General Manager, Corrugated
Container Division, Continental Can Company.**

CCC-2883

265

#39 NEW YORK

V. D. ARBUTHNOT

#524 RICHMOND

MAY 26, 1961

I HAVE JUST COME BACK FROM A TRIP TO NEW ORLEANS, JACKSON, ATLANTA AND RICHMOND. I FIND THAT AT ALL OF OUR SOUTHERN DISTRICT PLANTS THE VOLUME IS INCREASING MATERIALLY AND WE WILL HAVE FULL PRODUCTION AT ALL PLANTS IN MAY AND EVERYTHING LOOKS VERY FAVORABLE VOLUME WISE. HOWEVER, I HAVE NEVER RUN INTO SUCH VEHEMENT AND UNNECESSARY PRICE CUTTING. MEAD, GAYLORD AND UNION SEEN BENT, ALONG WITH KIECKHEFER, ON DESTROYING ANY REASONABLE OR SENSIBLE PRICE IN VIRGINIA.

IN THE ATLANTA AREA GAYLORD, INLAND, UNION, OLIN AND ST. JOE ARE ON THE RAMPAGE. OVER IN MISSISSIPPI AND ALABAMA IT IS SOUTHERN, OLIN, ST. JOE AND MEAD WITH OTHERS TO COME.

THEIR PRICING IS NOT ONLY GIVING AWAY ALL BOX SHOP CONVERSION PROFITS. BUT ON THE BASIS OF MARKET VALUE OF PAPER, THEY ARE EATING INTO MILL PROFITS. I WAS HOPEFUL THAT AFTER THE VOLUME BUILT UP THAT THE LOWER PRICED BUSINESS WOULD PICK UP IN PRICE, BECAUSE I DIDN'T THINK ANYBODY WOULD WANT IT. SO FAR THIS HAS NOT BEEN THE CASE. I DON'T FEEL THAT, AS LONG AS OUR PLANTS ARE OPERATING FULL AT NORMAL PRODUCTIVE CAPACITY, WE SHOULD TAKE THIS STUFF THAT IS IN THE GUTTER. DO YOU AND LEV PITTS AGREE WITH ME?

R. GRONER, JR.

RGJr/ev

CCT L. B. PITTS, #39

10/ EL 140

DEFENDANTS' EXHIBIT 141

Document No. CCC-2884-85

Description of document:**Monthly Activities & Progress Report****Date:****May 29, 1961****Addressed to:****Robert Groner, Jr., General Manager, Southern District, Corrugated Container Division, Continental Can Company****Written by:****William B. Beams, District Sales Manager, Martinsville, Va. plant, Corrugated Container Division, Continental Can Company****Other data:**

Copies to W. Duane Arbuthnot, Manager of Sales, Corrugated Container Division, Continental Can Company; Don G. Thomas, Sales Manager—National Accounts, Corrugated Container Division, Continental Can Company; Richard W. Everett, Assistant Manager, Sales Control Department, Continental Can Company; Robert S. Coakley, General Foreman, Martinsville, Va. plant, Corrugated Container Division, Continental Can Company; Benjamin F. Beeler, Plant Manager, Martinsville, Va. plant, Corrugated Container Division, Continental Can Company.

Edward Gruber referred to in the Report was District Sales Manager, Jackson, Miss. plant, Corrugated Container Division, Continental Can Company.

524 Richmond

W. D. Brown
613 Martinsville
May 29, 1961

Monthly Activities & Progress Report - 613 Martinsville
APRIL 1961

1. Gross Sales to Trade

1960
Budget Actual
300,000 342,100
114% Budget

1961
Budget Actual
320,000 339,350
106.0%

Gross Return Per Ton (Trade)

1960
Shipped Return
1422 240.58

1961
Shipped Return
1471 230.69

Gross Return Per H Sq. Ft. (Trade)

1960
Shipped Return
18,021 18.98
average wt. basis 157.8#

1961
Shipped Return
17,891 18.97
average wt. basis 164.4#

2. New Business

Five new accounts placed initial orders during April 1961 and these were:

<u>Company</u>	<u>Location</u>	<u>Salesman</u>	<u>Value Initial Order</u>
China Grove Cotton Mills	China Grove, N.C.	Sappenfield	\$ 672
Drew Furniture Co.	No. Wilkesboro, N.C.	Turner	494
Mid-State Tile Co.	Lexington, N.C.	Sappenfield	2800
Southern Glove Mfg. Co.	Conover, N.C.	Turner	924
Wholesale Auto Parts	Woodstock, Va.	Heald	114


3. Competition

Prices continue to tumble and the reductions, even in small volume accounts, border on the ridiculous. There is no pattern as the reductions range from 15% to 30% from the general levels in the area six months ago. We have had to meet many of these prices and we have been able to negotiate new levels in some cases that were not as low as prices from competition. We have where justified cut some prices on our own to maintain our volume. Practically all competition is guilty

W. D. Brown

DEFENDANTS' EXHIBIT 141

Continued

Continued Exhibit Text 

Robert Groner, Jr.
524 Richmond

W. B. Beams
613 Martinsville

May 29, 1961

Monthly Activities and Progress Report cont'd

of wanton price cutting. Our return per ton dropped 53¢ from March.

4. Due to District Territory reports being incorrect on credited sales that should have been transferred to 611 Atlanta no comparison of sales to quota can be made for April. This should be corrected in time to include this on May report.

5. Business Gained or Lost

- (a) Sales to Bassett Industries \$58,360 in April.
- (b) Presumably have lost some valuable business at Pulaski Veneer & Furniture Company, Pulaski plant, due to price reduction by Carolina Container and a customer commitment for six months. We are negotiating prices with customer now in an effort to regain business.
- (c) No other volume losses - but gross sales losses.
- (d) No sizable gains except in new accounts.

6. Forecast for May

Current backlog and shipments to date indicate we should exceed plant sales budget for May by \$15,000 to \$20,000.

7. Major Prospects

- (a) Blue Bell, Inc. - Greensboro, N.C. - currently running a packaging survey at all plants in conjunction with Ed Gruber. Expect some volume business in Virginia and North Carolina plants within sixty days.
- (b) Cone Mills - Greensboro, N.C. - we have indications we will receive sizable volume for last six months of 1961.
- (c) Vaughn Furniture Co. - Galax, Va. - if and when business picks up with this firm we should receive some nice volume.

8. Miscellaneous

Nothing of interest to report.

W. B. Beams

WBS:rw

cc:

W. D. Arbuthnot 39

D. G. Thomas 641

R. W. Everette 43

R. S. Conkley 523

D. F. Beeler 523

File

W/ 24 141-21

DEFENDANTS' EXHIBIT 146

Document No. CCC-2975

Description of document:**Memorandum****Date:****August 22, 1961****Addressed to:****Roy N. Taylor, Acting District Sales Manager,
Atlanta, Ga. plant, Corrugated Container Division,
Continental Can Company****Written by:****Bill Hensley, Salesman, Atlanta, Ga. plant, Corrugated
Container Division, Continental Can Company.****[Other data:****None.]****Exhibit Text**

CCC - 2775

271

CLASS. FROM CODE 2010

CONTINENTAL CAN COMPANY, INC.



INTERNAL CORRESPONDENCE

TO Roy Taylor

LOCATION:

FROM Bill Hensley

LOCATION:

ATTENTION:

DATE: 8/22/61

SUBJECT: Long Mile Rubber Company - Spartanburg, S.C.

REFER TO:

I saw Mr. Phillips (Jr.) to day and he says he is covered on his box requirements until the first of the year. He entered an agreement with Mead on August the 9th for 225,000 containers at a low price to beat the price increase that's coming up.

He indicated they use a Trailer load every 10 days and that Mead has about 90% of thier business. He gives Union Bag the remainder of his business largely because they are a local plant. According to Mr. Phillips our prices are in line with Union Bag, but Meads prices are much lower than ourselves and Union Bag.

Mead warehouses a token number of each of his 14 sizes and his trucks makes regular pickups from Atlanta.

Thanks

Bill Hensley

Ref E: 146

DEFENDANTS' EXHIBIT 148

Document No. CBO 8239-8240

Description of document:

Two Page Memorandum

Date:

June 23, 1961

Addressed to:

Joseph T. Tarantino, Jr., Manager, Florida Region

Written by:

Gordon M. Clark, Sales Manager, Greenville, South Carolina

Other data:

Copy to: J. C. Monroe, Plant Manager, Greenville, South Carolina.

Greenville

273

J. P. Tarantino, Jr.

June 23, 1961

Tampa

Gordon M. Clark

PRICE REDUCTION

Dear Joe:

In accordance with our recent discussion, we are listing below the accounts and total 1960 sales wherein we have been obliged to reduce prices either due to competitive conditions or due to a reduction in linerboard prices.

We have reduced prices on the following named accounts principally due to linerboard having been reduced. The first three accounts, we enjoy 100% of their business and each has been approached by competition with various offers of reduced prices so as a matter of protection, we have arbitrarily dropped their prices.

<u>NAME</u>	<u>1960 SALES</u>	<u>APPROX. DOLLARS REDUCTION</u> <u>(Based on Annual Sales)</u>
Stone Manufacturing	\$74,759.	\$3,750
MacShore Classics	39,100.	1,955
Her Majesty Underwear Co.	66,700.	3,335
General Electric	213,100.	2,785
TOTALS	\$397,250.	\$18,825

With respect to General Electric, we enjoy 100% of their business on a contract basis, which carries a bond clause.

The following accounts are those wherein we have been obliged to meet competitive conditions. I have indicated in the fourth column, the approximate percentage of reduction necessary to maintain their business. These accounts are as follows:


<u>NAME</u>	<u>1960 SALES</u>	<u>APPROX. DOLLARS REDUCTION</u> <u>(Based on Annual Sales)</u>	<u>PERCENTAGE</u>
Carlisle Finishing	\$13,000	\$ 650.	5%
Dayco Southern	83,000	4,150.	5%
Hibriten Furniture	51,700	2,585.	5%
Hickory Springs Mfg. Co.	12,560	1,000.	8%
Kent Coffey Mfg. Co.	56,000	2,800.	5%
Manetta Mills, Monroe, N. C.	20,000	3,000.	15%

CRO 8239

Chf. Ex. 148-1

DEFENDANTS' EXHIBIT 148

Continued

Continued Exhibit Text 

Greenville

J. P. Tarantino, Jr.

June 23, 1961

Tampa

Gordon M. Clark

PRICE REDUCTION

NAME	1960 SALES	APPROX. DOLLARS REDUCTION (Based on Annual Sales)	PERCENTAGE
Manetta Mills, Lando, S. C.	24,000	7,900	33%
Hygrade Foods	50,000	4,000	8%
Rocky Mount Mills	19,600	1,560	8%
Southern Bleachery	74,300	7,430	10%
Union Bleachery	<u>125,000</u>	<u>6,250</u>	5%
TOTALS	\$ 529,160.	\$ 41,325.	

The above, to the best of our knowledge, indicates most of the accounts wherein we have had to meet various conditions. We will continue to keep you fully informed of any new developments.

Best regards,

GMC:way
cc: J. C. Monroe

CRO 8240

W/ 44-1480

DEFENDANTS' EXHIBIT 154

Document No. INL 2409-2411 inclusive
[Inland Container Corporation]

Description of document:

Intra company sales report

Date:

March 21, 1961

Addressed to:

R. B. Turner, then Vice President Sales

Written by:

B. E. Roberts, then Sales Manager Macon, Georgia
Sales District

Other data:

Under paragraphs "2 & 3" the reference to "28% to 33% off of the \$12.35 Manual" under "Springs Cotton Mills" means 28% to 33% less than an amount computed by using a \$12.35 board level or charge per 1,000 sq. ft. for 200 lb. test single wall container board. A similar reference is made under "Arnco Mills." "25% off of \$13.00" under "Seapak" means 25% less than an amount computed by using a \$13.00 board level.

INLAND CONTAINER CORPORATION
OFFICE MEMORANDUM

TO: R. B. Turner - 1

DATE: March 21, 1961

SUBJECT: PROGRESS REPORT - FEBRUARY

FROM: B. E. Roberts - 7

1. Volume versus Projection

During February we projected 28,680 M Sq. Ft. and we actually shipped 26,327 M Sq. Ft. or 92% of our projection.

2&3 Price Levels - Competitive Activity

Prices are being reduced in all of our regular accounts by competition and competitive activity is very severe at the present time.

We are listing below the major accounts where prices have been reduced due to competitive activity during the month of February. These prices have been reduced due to competitive activity and we are only meeting situations in these instances and not arbitrarily reducing our prices unless competition has already reduced the existing level in these accounts.

Dover Mills - 5% price reduction due to Union Bag activity

Hill Packing - prices reduced due to Mead-Atlanta activity

Spring Cotton Mills - this account is currently going at approximately 28% to 33% off of the \$12.35 Manual and competitors active in the accounts at the present time are Kleckhefer, Gaylord, Union and National.

Arneo Mills - we recently quoted this particular account 25% off of the \$12.35 Manual and we lost the business at 30% off the manual to Gaylord and Mead-Atlanta.

Pittsburgh Paint - Cair and Union reduced the level in this particular account 7%.

Standard Brands - National Container reduced the price level due to a pick up from their Jacksonville Plant which they can show a definite savings rather than have the customer pick up at Macon, Georgia.

DeSoto Chemical - price reduction Cair and Gaylord.

Gladiola Biscuit - National Container submitted a proposal to Gladiola Biscuit on a basis of a \$39.00/M price furnishing HCN material. Our current price at Gladiola Biscuit is \$40.00/M using QXQ material.

Ref 4. 154-
INL 2409

-2-

Reynolds Metals Company, Richmond, Virginia - we lost an order for 500,000 cases at \$45.00/M which is the same item we are currently selling Louisville, Kentucky at \$48.50/M. This case has 6.7 M Sq. Ft. and is 125% test material.

Minerals and Chemicals - 50% M Sq. Ft. reduction - competition unknown.

Southern Clays - 50% M Sq. Ft. reduction - competition unknown.

Kemp Corporation - gradual decline - now approximately 22% off of the manual due to Union Bag activity.

Seapak - now 25% off of \$13.00 due to Mead and Union activity, primarily Union Bag.

Aluminum Chair - an additional 7% reduction in February due to Union Bag activity.

Fabro - 5% reduction due to Mead-Atlanta and Atlanta Container activity.

Famous Foods - level reduced due to Ace Box activity; sheet plant in Atlanta primarily buying their sheets from Mead-Atlanta.

Owens-Corning - necessary to retype our contract price list with a substantial reduction due to International Paper reducing their prices because of corrugating medium and also reduction in their set up due to a lower set up being used in some of the other Eastern Plants of Owens-Corning.

R. J. Reynolds Tobacco Company - Mead-Atlanta has picked up one car of miscellaneous cartons off of the current going market, also Richmond Container has reduced this level and has received an order for approximately 300,000 Camel Cases going into the second quarter of 1961.

4 Reductions in cost of territory coverage

Very little progress is being made in reduction of territory coverage expense due to the number of extemporaneous type calls the package engineers must make in order to meet competitive activity and in most instances it is practically impossible to follow any set pattern as far as a sequence of calls are concerned.

5 Elimination of unjustifiable entertaining

We have had no major entertaining during the month of February, however, we do contemplate several major entertainments during the month of March and April and we have been endeavoring to hold back on our entertainment expense so as to be able to justify these major entertainment expenses coming up during the months of March and April.

4/4.1542
INL 2410

-3-

6 Reduction in travel expense

At the present time we are operating somewhat below our overall sales expense budget for 1961 as follows:

We are \$664.00 under our budget on telephone, \$1271.00 under our travel budget and \$1062.00 under our entertainment budget.

These are year to date figures and as far as the telephone expense is concerned this might be erroneous since quite possibly we do not have all of the February telephone figures included in the total for this accounting period.

During 1960 we had a District sales expense cost of .498 cents per M Sq. Ft. For January and February year to date figure we have .402 cents per M Sq. Ft. which is a sizeable reduction in our cost per M Sq. Ft. for the Macon Sales District for the two months of 1961.

7 Progress - Five Major ProspectsH. L. Barbour, Jr.

We have recently negotiated a contract with Dan River Mills for the balance of 1961 amounting to approximately \$100,000.00.

It is our understanding that we will receive approximately 100% of the business at Gladiola Biscuit which should net us approximately ten million feet during 1961.

P. J. Prinz

At Carling Brewing Company we have received a trial order for a retrip beer case on which we expect definite results and which we hope also will lead us back into the picture as far as their can beer carton requirements are concerned.

T. A. Gordon

No definite reaction as yet on our program for Tom Gordon's five major prospects although we expect a definite reaction in several instances very shortly.

R. L. Bridges

We have received our first release from Dixie Paint and Vernish Company and have been promised additional business from this concern as long as we are competitive price-wise and assuming that our service and quality is also satisfactory.

R. E. King

Quite a few new accounts have been opened up since the first of the year by Rad King, however, we have not been able to secure any definite business from the five major prospects but we expect some progress on these five majors to be shown in the very near future.

P. H. Board

No progress of any consequence on the five major prospects of Paul Board at the present time.

11/11/61
4/154-3

DEFENDANTS' EXHIBIT 155

Document No. INL 2415-16
[Inland Container Corporation]

Description of document:

Intra company sales report

Date:

April 7, 1961

Addressed to:

F. M. Talbot, then Vice President and
Southern Regional Sales Manager—

Copy to R. B. Turner, then Vice President Sales

Written by:

O. D. Lloyd, then Sales Manager Louisville
Sales District

Other data:

[None.]

April 7, 1961

F. M. Talbot—7
cc: R. B. Turner—1

O. D. Lloyd—15

**MONTHLY PROGRESS REPORT
LOUISVILLE DISTRICT**

1. Volume

Budget 17.6M [✓]

Actual 14.3M [✓]

—Approximately 2.3 below budget

Volume in our area is directly affected by economic conditions, particularly in the hard goods industry. We do not anticipate any particular improvement in this end of our business in the immediate future.

2. Price Level

Budget—\$15.20


Actual \$14.76

Approximately 44¢ per 1000 sq. ft. below budget, reflecting the economic market conditions in this area and continued severe competitive conditions.

3. We are currently making an analysis of the cost of our territorial coverage and upon completion of this we anticipate to be able to take steps to reduce our current costs.
4. Our travel expense continues well within budget, however, we are finding it necessary to make trips to call on our customers that would not normally be necessary, which is again directly due to the acute competitive activity.
5. We are continually being forced to meet competitive prices in order to hold our position at various accounts. The recent reduction in the market of corrugating medium has induced some of our competitors to offer this reduction in the cost of boxes to customers in our area and we have repeatedly been forced to meet the situation. As an example of the competitive conditions, we have just lost the business at the Klarer Company based on prices submitted by our competitor the Mongel Company, which are approximately 10% below prices we had enjoyed during the first quarter of this year. We find that other competitors of ours in this area are also quoting prices at this account considerably below our market. We will have an opportunity to, of course,

DEFENDANTS' EXHIBIT 155

Continued

Continued Exhibit Text 

regain this business the first of July. However, at present it appears we will have to substantially reduce our current price in order to regain this business which amounts to approximately 750M to 800M[/] per quarter.

6. Major Accounts

- a. General Electric—Dishwasher & Disposall Dept. We are making excellent progress here and expect to obtain the container business for a newly designed dishwasher which they will be in production on approximately July 1st of this year. This business will amount to approximately 110M[/] per month.
- b. Ence Container—We have received our first orders from this concern which amount to approximately 1 M[/]. This business should grow rapidly and should amount to 15M to 20M per year.
- c. Russell Springs Mfg.—Ken Potter has really opened this account for us and although the annual usage is rather small it is a clothing manufacturer and should be steady business for us in the amount of 750M to 1 M[/] per year.
- d. American-Radiator—We have recently shipped our first order of containers for their Iron Goods Division and believe our position there will continue to grow so that we should enjoy at least 7M[/] of additional business with this customer this year.

No particular progress to report at other major prospects at this time.

CDL:we

DEFENDANTS' EXHIBIT 167

Document No. INL 2774
[Inland Container Corporation]

Description of document:
Intra company memorandum

Date:
April 21, 1961

Addressed to:
G. B. Elliott, then President

Written by:
C. F. Smith, then Vice President Marketing

Other data:
"Owens" refers to Owens-Illinois

G. B. Elliot
cc: P. F. Bolton

April 21, 1961

AMERICAN TOBACCO

C. F. Smith

We lost all business with American Tobacco Company for the 2nd quarter due to extremely low prices quoted by Owens. They received orders for approximately 360,000 cases covering the entire requirement.

Comparative prices are as follows:

	HELAND	OWENS
Pall Mall	\$ 158.00	\$ 136.00
Lucky Strike	137.50	127.50

Owens has not previously participated in this business and the above prices are substantially below our cost.

/jrh

INL-2774

4/24/67

DEFENDANTS' EXHIBIT 169

Document No. INL 2776
[Inland Container Corporation]

Description of document:

Intra company memorandum

Date:

May 1, 1961

Addressed to:

No specific addressee indicated but in fact delivered to Sales Manager Macon, Georgia Sales District who was then B. E. Roberts

Written by:

Herbert L. Barbour, then Macon Sales District Package Engineer

Other data:

[None.]

FORM 508

INLAND CONTAINER CORPORATION
OFFICE MEMORANDUM

TO:

DATE May 1, 1961

SUBJECT: GLADIOLA BISCUIT COMPANY

FROM Herb Barbour

I had made an agreement with Gladiola Biscuit Company to furnish them with 100% of their requirements on the following basis:

RSC 12 5/8 x 8 7/16 x 5 1/2, QXQ, Glue Lap, 1c4p, Truckload lots
\$ 40.00 per M

Owens-Illinois came in and offered to run the same cartons at 39.00 per M and to furnish NxN material. On this basis they ran 1 truck before we took the business on 100%.

Two weeks later they contacted the Vice President of the company and quoted 37.50 M on the same carton furnishing NxN if they could take on the Dallas and Greensboro plants 100%. This offer was turned down by Mr. McGill who is a very good friend of Inland.

As you can notice, Owens-Illinois has been quite active in this area with their prices. They have depressed prices considerably.

GREENSBORO PLANT = 10 MM YEAR
DALLAS PLANT = 7 MM YEAR

INL-2776

DEFENDANTS' EXHIBIT 170

Document No. INL 2778
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

May 1, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland

Written by:

H. L. Barbour, then Sales Manager, Macon, Georgia
Sales District

Other data:

To: L. H. Robinson - 1

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7

Customer	Location	District & Eng. Engineer	Annual Potential - M2	Report Date
P.H. Harris Co. W. Stead - Stead, D.C.	Position	3-174	10 M2	5-1-61
CECILE BUSTIC	Price Quoted By Inland	Verbally <input checked="" type="checkbox"/> Per Letter Attached <input type="checkbox"/>	Information Received By	
Description - (Size, Style, Text, etc.)		Total Amt. of Order	Reported Competitors Price -	Competitors If Business Lost, Why?
#10 ASC 16 1/2 x 20 1/4 4x4, 275" SW 20.30, Type	957.10		MENGEL 914.95	
#14 ASC 21 x 14 1/2 x 30 1/4, 275" SW 20.30, Type	579.80			553.25

Disposition

ME. BOSTIC ASKED FOR PRICE REDUCTION DUE TO DECREASE IN ~~TEXT~~ COLLECTOR MEDIUM. MR. J.D. EVANS OF MENGEL (WHICH IS PRIME SOURCE IN ACCOUNT) CUT PRICES ON ENTIRE LIST (Per 2 samples shown). MR. BOSTIC FURNISHED ME WITH A COPY OF MENGEL'S PRICES WHICH

Form 602
12/29-2500

Q. E. 170

DEFENDANTS' EXHIBIT 171

Document No. INL 2779
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

May 1, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland

Written by:

H. L. Barbour, then a Macon, Georgia Sales District
Package Engineer

Other data:

"Cont Can" refers to Continental Can

To: L. Robshaw - 1

cc:

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7

Customer	Location	District & Pkg. Engineer	Annual Potential-192	Report Date
DeSoto Chemical Company, Greenville, NC.		Verbal 7-12-4	8 Mar	5-1-6
Information Supplied By	Position	Per Letter Attached <input type="checkbox"/>	Information Received By	
J.O. Kofas 213, Diller & F. W. H. H.		TOTAL AMT. of Order	Competitors Price	If Business Lost, Why?
Description - (Size, Style, Test, etc.)	Price Quoted By Inland	Reported Competitors		
41R(END) RSC. 13 1/2 x 7 1/2 x 13 3/4 K.K.	86.95	15m GAYLORD CUT COW CAROLINA	82.90	Lower price
Remarks		Disposition		
<p>I lost 1 order and then met pine put in my competitors. Carlin Chittam cut pine first, then Gyford cut that price.</p> <p>11.73 INT. 2779</p>		<p>Mr. Roberts also mentioned that 2 firms told him to send them an order and to put whatever price he wished on the order.</p>		

DEFENDANTS' EXHIBIT 173

Document No. INL 2786
[Inland Container Corporation]

Description of document:

Intra company/lost business report

Date:

May 22, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales District
Package Engineer

Other data:

"C Corp" and "H & D" refer to Container Corporation
and Hinde & Dauch Paper Company, respectively.

"13.00 manual" refers to the Inland Manual using a
\$13.00 board level or charge per 1000 sq. ft. for 200
lb. test single wall container board.

DEFENDANTS' EXHIBIT 177

Document No. INL 2790
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

June 26, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of Sales
for Inland—Copy to B. E. Roberts, then Sales Manager
Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales District
Package Engineer

Other data:

The figures, symbols and words under "Price Quoted
By Inland" mean 25¢ per thousand square feet under
the Inland manual using a \$13.00 board level or
charge (as defined on Document No. 2789) and \$25
set up charge.

The abbreviations "C Corp" and "O-I" refer to Con-
tainer Corporation and Owens-Illinois.

Exhibit Text

* Handwritten text under "Remarks" is as follows:

"had to come off my price 20% but will not lose any
volume—25% off prices was C Corp—OI was 20%
off—"

LOST ACCOUNT OR LOST POSITION INFORMATION

To: L. H. Robinson - 1 ✓
cc: C. F. R. - 2From: (District) *Michigan*

Customer <i>Michigan</i>	Location <i>Ann Arbor, Mich.</i>	District & Eng. Engineer <i>1-176 & 1-177</i>	Annual Potential-1930 <i>1,176 & 1-177</i>	Report Recd. <i>1-26-31</i>
Information Supplied By <i>1-176 & 1-177</i>	Position <i>1-176 & 1-177</i>	Verbally Let <i>1-176 & 1-177</i>	Information Received By <i>1-176 & 1-177</i>	
Description (Size, Style, Test, etc.)	Price Quoted By Inland	Total Amt. of Order	Reported Competitors Price	If Business Lost, Why?
<i>All Sizes</i>	<i>15¢ 11-1 (value 13¢) 11-11-11-1 5¢ 11-11-11-1</i>		<i>30¢ 25¢ under over hard</i>	<i>See below</i>

Disposition

Remarks

*had to come off my price 20%
but will not lose any volume -
25% off price were 2 Corp -
OI was 30% off -*

INL 2790

Form 6421
12/30-3600

DEFENDANTS' EXHIBIT 180

U. S. v. Container Corporation et al.

Document No. INL 2795

[Inland Container Corporation]

Description of document:

Intra. company lost business report.

Date:

July 18, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District.

Written by:

Tom Gordon, then a Macon, Georgia Sales District
Package Engineer.

Other data:

[None.]

To: L. H. Goldshaw - 2
cc: B. E. Goldshaw - 2

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7-12V

Customer <u>Thasalla</u>	Location <u>San Francisco, CA</u>	District & Eng. Engineer <u>7-12V T. H. Goldshaw</u>	Annual Potential - \$2 <u>10,000</u>	Report Date <u>7-15-11</u>
Information Supplied by <u>11/1/11/11/11</u>	Position <u>SA</u>	Verbally <u>by</u>	Information Received by <u>T. H. Goldshaw</u>	
Description (Size, Style, Text, etc.)	Price Quoted By Inland	Total Amt. of Order	Reported Competitors	Competitors Price
<u>Entire Requirements</u> <u>180% Synthetic Fiber</u> <u>predominantly J, V, J₂</u>	<u>Normal</u> <u>20% on</u> <u>by mail</u> <u>less 10%</u> <u>on balance</u>	<u>\$250,000</u> <u>monthly</u>	<u>Ten State</u> <u>Carolina</u> <u>Leica</u> <u>Union</u> <u>Continous</u> <u>Whyslamm</u> <u>Wend</u> <u>Davis</u> <u>Overmalt</u>	<u>approx</u> <u>234.75%</u> <u>off normal</u>
				<u>we were 4th</u> <u>in price</u>

Disposition

Quotation made on what amounts to a 2-year contract, with a firm price for 1 year, as well as which period contract will be negotiated for the 2nd year, with proviso that no increase will be more than 7% the only basis for any increase will be based on the labor.

150

It will find out who of the business next week.

It should me that, all the we got no business, or had established ourselves will blame for future relations.

As has a past connection him to and out of style.

12/19-2950 will not have realized the savings involved.

12/19-2950 will not have realized the savings involved.

12/19-2950 will not have realized the savings involved.

DEFENDANTS' EXHIBIT 181

Document No. INL 2798
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

July 28, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. E. King, then a Macon, Georgia Sales District
Package Engineer

Other data:

"CCA" refers to Container Corporation and "Union"
to Union Bag.

To: L. H. Robbins - 1

cc: R.F. Roberts - 2

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7

Customer	Location	District & Eng. Engineer	Annual Potential-113	Report Date
PARIS HANDBERNE CO	ALBUQUERQUE, NM	7-123	5.6	7-25-6
Information Supplied By	Position	Verbally <input checked="" type="checkbox"/> Per Letter Attached <input type="checkbox"/>	Information Received By	
PARIS	PARIS		5.6	
Description (Size, Style, Test, etc.)	Price Quoted By Inland	Total Amt. of Order	Competitive Price	If Business Lost, Why?
RSC-KYK-TAPE IPIC				
16YH X 6	56.10	15.11	79.50	
16YH X 9	94.50	PER 1440	86.00	
16YH X 10	116.70		99.50	
16YH X 13	124.05		105.00	
16YH X 15	135.65		121.00	
Remarks	Disposition			

C.C.A. QUOTED THESE PRICES &
CUSTOMER LET US MEET THEM.
I KEEP MOST OF THE BUSINESS.

INL-2738

Sep. 26. 1961

Form 6021
12/59-2500

DEFENDANTS' EXHIBIT 185

Document No. INL 2803
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

September 29, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon; Georgia Sales District

Written by:

R. E. King, then a Macon, Georgia Sales
District Package Engineer

Other data:

"CCA" refers to Container Corporation.

LOST ACCOUNT OR LOST POSITION INFORMATION

 See L. E. Robinson - 2
 on C.E. BRENNIS-7
From: (District) 7

Customer	Location	District & Eng. Engineer	Annual Potential-192	Report Date
<u>PARMS HANFELMER</u>	<u>ALBANY, N.Y.</u>	<u>7-127</u>	<u>66</u>	<u>9-28-22</u>
Information Supplied by	Position	Verbal by <u>EL</u>	Information received by <u>C.E. BRENNIS</u>	
<u>PARMS</u>	<u>CUTLER</u>	Per Letter Attach <input type="checkbox"/>	Competitors Price	If Business Lost, Why?
Description - (Size, Style, Test, etc.)	Price Quoted By Inland	Total Amt. of Order	Reported Competitors Price	
<u>RSC 16 YH X 6</u>	<u>878.50</u>	<u>157</u>	<u>UNION BAG</u>	<u>PRICE</u>
<u>" 16 YH X 8</u>	<u>86.00</u>	<u>TO 10.00</u>	<u>C.C.A.</u>	
<u>" 16 YH X 10</u>	<u>99.50</u>			
<u>" 16 YH X 13</u>	<u>105.00</u>			
<u>" 16 YH X 15</u>	<u>122.00</u>			
<u>KXK 100 TIRE</u>				

Disposition

AFTER WE MET C.C.A. PRICES, AND
 THEN A CONTRACT FOR 25000 REIMS
 UNION BAG CUT OUR PRICE BY
 APPROX. 10% & SHIPING CUSTOMER
 4 TROU LOADS, THEY SHIPED.
 RETURNER AUG. 15TH & 5007-5TH.

712-2803

 Form 6001
 12/29-2900

DEFENDANTS' EXHIBIT 194

Document No. INL 2826
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

March 27, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales
District Package Engineer

Other data:*

[None.]

Exhibit Text

* Handwritten text under "Remarks" is as follows:
"Met this level and received order—"

LOST ACCOUNT OR LOST POSITION INFORMATION

From (District, Name)

TOTALS:
cc:

Customer	Location	District & Eng. Engineer	Annual Potential-MB	Report Date
Co. Mfg. Co.	Highland Park	1-12-18 J. B. B.	3.0	2-27-27
Information supplied by	Position	Verbally <input checked="" type="checkbox"/> Per Letter Attached <input type="checkbox"/>	Information received by	
J. H. Hegerstedt	See pin.		J. H. Hegerstedt	
Description (Size, Style, Text, etc.)	Price Quoted By Inland	Total Amt. of Order	Reported Competitors Price	If Business Lost, Why?
#6016 ASC, KXK, 2" x 10" x 18"	305.60 per 5 m per	\$1437.25	587.45 per 5 m per	
19-3/4" x 18 5/8" x 23-				

Remarks: *Wid. this land & record
Order -*

2826
J. E. 194
Form 6021
12/29-2700

DEFENDANTS' EXHIBIT 195

Document No. INL 2828-29
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

April 3, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales
District Package Engineer

Other data:*

The reference to "13.00 manual" refers to a \$13.00
board level or charge (as defined in Document No.
2789). The references in Document No. 2829 to
"1T/L" and "3T/L" are to one truck load and three
truck loads, respectively.


Exhibit Text

* Handwritten text of "Remarks" is as follows:

"Lost an order to Union because of this reduction—
Met this price and took an approx \$3,500.00 order.—"

DEFENDANTS' EXHIBIT 195

Continued*

Continued Exhibit Text 

* Handwritten text of "Remarks" is as follows:

"Union Bag Camp Paper cut the level on this account from 20% off \$13.00 manual to 23% off, received 1 T/L & I met the price and received 3 T/L. Buyer states he doesn't want the price to go below this because he feels we are losing money at this low rate—"

LOST ACCOUNT OR LOST POSITION INFORMATION

From (District) _____

Customer <u>P. C. C. Co. P. A. H. Co.</u>	Location <u>At. H. Co. P. A. H. Co.</u>	District & Eng. <u>At. H. Co. P. A. H. Co.</u>	Annual Potential <u>7.5</u>	Report Date <u>3-27-41</u>
Information supplied by <u>At. H. Co. P. A. H. Co.</u>	Position <u>At. H. Co. P. A. H. Co.</u>	Vertically <u>At. H. Co. P. A. H. Co.</u>	Information received by <u>At. H. Co. P. A. H. Co.</u>	
Description - <u>At. H. Co. P. A. H. Co.</u>	Price Quoted <u>At. H. Co. P. A. H. Co.</u>	Total Amt. of Order <u>At. H. Co. P. A. H. Co.</u>	Competitors Price <u>At. H. Co. P. A. H. Co.</u>	If Business Lost, Why? <u>At. H. Co. P. A. H. Co.</u>
(Size, Style, Test, etc.)	By Inland	Reported Competitors		

See below -

Remarks	Disposition
<p>Western Poly Corp. Paper lost - the lost on this account from 20% of 13000000 to 2.3% off the normal 1 TL + 2 input the more and passed 3 TL Paper cloth the company wants the paper 13000000, because he paid 13000000, because he paid 13000000, because he paid 13000000, because he paid</p>	<p>4/19/41</p>

DEFENDANTS' EXHIBIT 198

Document No. INL 2841
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

March 13, 1961

Addressed to:


L. H. Robishaw, then Administrative Manager of Sales for Inland—Copies to B. E. Roberts, then Sales Manager Macon, Georgia Sales District and F. M. Talbot, then Vice President and Southern Regional Sales Manager

Written by:

Tom Gordon, then a Macon, Georgia Sales District Package Engineer

Other data:

[None.]

Exhibit Text 

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7122

TO: 1. District
cc: 2. District

Customer	Location	District & Eng. Engineer	Annual Potential-kg	Report Date	
SPRINGS COTTON MILLS	Fort Mill, S.C.	7122 T.A. Gardner	40.0	4/30/61	
Information Supplied By		Information Received By			
MILK BELL BUILDING	ASSY P.P.A.	Verbally <input checked="" type="checkbox"/> Per Letter Attached <input type="checkbox"/>	T.A. Gardner		
Description - (Size, Style, Test, etc.)	Price Quoted By Inland	Total Amt. of Order	Reported Competitors	Competitors Price	If Business Lost, Why?
1 FEE 11xKxJ, 32x20x34, 20x20, PL	918.25	1500	850-05	585.25	Comp price 11/14/61 12/5/61
" 36x20x26 "	771.20	1000		716.00	
" 42x13x18 "	524.00	1000			
" 3xKxJ, 23x10x28 "	381.50	500		354.00	
" 23x10x28x6, 21x11x11xKxJ "	229.50	1M			
" 23x10x28x6, 21x11x11xKxJ "	133.60	500			

Disposition

Remarks

Quoted 5/9/61. Business placed 5/10/61.
ITEM #1 (SEE MY REPORT OF 4/10) WAS TAKEN BY
COMPETITION PREVIOUSLY FOR \$897.65/PL. THIS VS
THE PATTER— I THOUGHT THE BOTTOM WAS SET
TWO WEEKS AGO, BUT APPARENTLY THE SHOW WASN'T
REACHED BECAUSE OF THAT.



Form 6021
12/17-2000

DEFENDANTS' EXHIBIT 199

Document No. INL 2842
[Inland Container Corporation]

Description of Document:

Intra company lost business report

Date:

May 15, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. E. King, then a Macon, Georgia Sales District
Package Engineer

Other data:

"CCA" refers to Container Corporation.

Exhibit Text

* Handwritten text of "Remarks" is as follows:

"We have had this business for over a year. CCA
cut our price & tried to tie up business for re-
mainder of year. Customer gave them one order
& agreed to let us meet price on future orders".

DEFENDANTS' EXHIBIT 202

Document No. INL 2846-48

Description of document:

Intra company lost business report

Date:

June 26, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales District
Package Engineer

Document No. 2846

Other data:*

"13.00 manual" refers to a \$13.00 board level or
charge (as defined in Document No. 2789). "C Corp"
refers to Container Corporation.

Document No. 2847

"13.00 new set up" refers to a \$13.00 board level or
charge and a \$25 set up charge. "OI" refers to
Owens-Illinois.

Exhibit Text

*** Handwritten text of "Remarks" is as follows:**

(1st page) "C Corp. put prices in 35% off 13.00
manual. didn't receive any business. Will have to
meet these prices to stay in this account"

(2nd page) "C Corp. put in prices 35% below our
level in this account had to meet this but will not
lose any volume—"

(3d page) "had to come off my price 20% but will
not lose any volume—25% off prices were C Corp—
OI—was 20% off—"

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) San Fran

Customer <u>Comp. Corp.</u>	Location <u>Highland Ave.</u>	District & Eng. Engineer <u>1-16-28</u>	Annual Potential - \$ <u>100,000</u>	Report Date <u>8-28-81</u>
Information Supplied by <u>W.H. H. H.</u>	Position <u>1-16-28</u>	Verbally <u>1-16-28</u>	Information Received by <u>W.H. H. H.</u>	
Description (Size, Style, Text, etc.)	Price Quoted By Inland	Per Letter Attached <input type="checkbox"/>	Competitors Price	Why?
<u>all sizes</u>	<u>20% off</u> <u>13.00</u> <u>100% wool</u> <u>100% Sat. 100%</u>		<u>See below</u>	
Remarks	Disposition			

C Corp. put price in
35% off 13.00 promised
I didn't receive any business
will have to meet this account
given to them in the account
W.H. H. H.
6-28-81

LOST ACCOUNT OR LOST POSITION INFORMATION

Trans (District) Memo

(342)

Customer <u>ERO M9 G. Hartzel</u>	Location <u>GA</u>	District & Reg. Engineer <u>1-126 JTB</u>	Annual Potential- <u>1.5</u>	Report Date <u>6-28-61</u>
Information supplied by <u>W. B. 2125 E</u>	Position <u>GA 2125 E</u>	Verbally <input checked="" type="checkbox"/> Per Letter Attached <input type="checkbox"/>	Information provided by <u>J. H. Hartzel</u>	
Description - (Size, Style, Test, etc.)	Price Quoted By Inland <u>1300 New</u> <u>Setup</u>	Total Amt. of Order	Reported Competitors <u>None & OI</u>	Competitors Price <u>See below</u>

Disposition

Remarks

C Corp. put in price 85%
below our level in this account
had to meet the bid and will not
lose any volume -
W. B. 2125 E
6-28-61

127-2847

LOST ACCOUNT OR LOST POSITION INFORMATION

From (District) MEMPHIS

To: L. H. Williams
606-7

Customer <u>John M. Swisher & Sons -</u>	Location <u>Jacksonville, Fla.</u>	District & Eng. Engineer <u>7-126</u>	Annual Potential <u>70</u>	Report Date <u>8-26-61</u>
Information Supplied By <u>WILLIAMS</u>	Position <u>SA</u>	Verbally <u>Per Letter Attached</u>	Information Received By <u>W. H. Williams</u>	
Description (Size, Style, Text, etc.) <u>All Sizes</u>	Price Quoted By Inland <u>25¢ 11.2</u> <u>under 1300</u> <u>normal 1100</u> <u>set up -</u>	Total Amt. of Order	Reported Competitors Price <u>20 to 25%</u> <u>under</u> <u>over</u> <u>hard</u>	Why? <u>See below</u>
Remarks		Disposition		

HAD to come off my price 20%
but will not lose any volume -
25% off price were C Corp -
O.I. 20% off -

6/24/2025
REL 2843

DEFENDANTS' EXHIBIT 203

Document No. INL 2853-54
[Inland Container Corporation]

Description of document:

Intra company memorandum and
customer quote sheet

Date:

October 30, 1961

Addressed to:

R. B. Turner, then Vice President Sales—Copy to
C. F. Smith, then Vice President Marketing

Written by:

F. M. Talbot, then Vice President and Southern
Regional Sales Manager

Other data:

[None,]

Exhibit Text

*** Body of text is as follows:**

"I am attaching prices that were quoted Chattanooga Glass Company by Inland, and directly below the prices that were quoted by St. Joe Paper Company and Union Bag.

"This will give you an idea of the vicious type of pricing that we were faced with at this account. We raised prices at Chattanooga Glass Company, on October 1st, and our competitors reduced their market levels making our position look ridiculous.

"As you know this is major account for the Rome Sales District and we were forced to meet the competitive market".

R. B. Turner - 1
cc: C. P. Smith - Exec. Offices

October 30, 1951

Competitive Prices - Chattanooga Glass Company

F. H. Talbot

I am attaching prices that were quoted Chattanooga Glass Company, by Inland, and directly below the prices that were quoted by St. Joe Paper Company and Union Bag.

This will give you an idea of the vicious type of pricing that we were faced with at this account. It will show prices at Chattanooga Glass Company, on October 1st, and our competitors raised their market levels making our position look ridiculous.

As you know this is a major account for the East Sales District and we were forced to meet the competitive market.


/ch

attachment

INTL-2853

DEFENDANT'S EXHIBIT 203

Continued

Continued Exhibit Text 

Chattanooga Glass Company
Chattanooga, Tennessee

QTY.	SIZE	QTY.	QTY.	QTY.	QTY.	QTY.	QTY.	QTY.	QTY.	QTY.
3207	Sec. 3 Ctbl. 17 5/8 x 12 3/16 x 7 5/8	5.97	129	200	1622	-	23.000	73.57	27.50	73.57
3207	Sheet						(St. Fee)			
3207	Sec. 3 Slat. 19 5/8 x 12 5/16 x 7 5/8	5.95	129	200	1622	-	23.000	95.00	27.50	95.00
3207	Sheet						(St. Fee)			
3210	Sec. 3 Slat. 20 1/4 x 12 3/4 x 9 1/4	6.73	129	200	1622	-	29.000	119.89	27.50	119.89
3210	Sheet						(St. Fee)			
3225	RSC	17 x 12 1/4 x 11 11/16	12.72	111	150	1642	Stitch	23.000	135.15	103.02
3225							(St. Fee)			
3235	RSC	20 x 12 3/8 x 7 11/16	10.64	111	150	1642	Stitch	23.000	107.15	97.00
3235							(St. Fee)			
3210	RSC	20 3/8 x 12 1/2 x 9 11/16	11.25	111	150	1642	Stitch	23.000	110.51	103.00
3210							(St. Fee)			
3212	RSC	22 1/4 x 13 3/4 x 9 11/16	12.02	111	150	1642	Stitch	23.000	120.50	123.33
3212							(St. Fee)			
3207	Sec. 3 Slat. 15 1/2 x 10 x 3 7/8	3.00	129	200	1622	-	23.000	47.00	27.50	47.00
3207	Sheet									
	(5) AFT	10 x 3 7/8	1.50	97	125	Plain	-	27.000	57.00	57.00
	(3) AFT	15 1/8 x 3 7/8	1.23	97	125	Plain	-	(St. Fee)	73.22	73.22

Ref. 46.203-1

INL2851

DEFENDANTS' EXHIBIT 206

Document No. IPC-00945

Description of document:

Internal Memorandum re Sales Policy

Date:

September 11, 1961

Addressed to:Ed Agar, then Southern Regional Manager Container
Division, International Paper Company**Written by:**P. C. Strine, then General Sales Manager, Container
Division, International Paper Company**Other data:**J. R. "Bob" Grayson, Plant Manager, Springhill,
Louisiana, Container Division, International Paper
Company

INTERNATIONAL PAPER COMPANY

321

CONTAINER DIVISION

New York Office

FOR USE ONLY WITHIN THE COMPANY

Date September 11, 1961

Subject

**Sales Policy on Containers
East of the Rocky Mountains
Effective August 15, 1961**

To

**Mr. E. Agar
Springhill**

Reference is made to your note of August 23rd which has to do with Bob Grayson's note of August 22nd, the subject, Price Increases.

We agree that on those accounts listed in Mr. Grayson's note it will be necessary to do what competition does if we are to hold our business.

You should, of course, increase prices if competitive conditions change, since, as you know, higher prices for our products are so badly needed.


**P. S.
P. C. Strine**

sa

cc: Mr. J. R. Grayson

DEFENDANTS' EXHIBIT 211

Document No. IPC-2196

Description of document:**Internal Memorandum****Date:****July 15, 1961****Addressed to:****A. B. Damon, then General Manager, Container Division, International Paper Company****Written by:****J. R. Grayson, Plant Manager, Springhill, Louisiana, Container Division, International Paper Company****Other data:****Copies to other interested International Paper Company Container Division personnel****Structoglas is a customer of International Paper Company****Lennie Berry, then Salesman, Springhill, Louisiana, Container Division, International Paper Company****"Owens Illinois" refers to defendant Owens-Illinois Glass Company. "Memphis" refers to Owens-Illinois' Container Plant at Memphis, Tennessee.****Exhibit Text** 

INTERNATIONAL PAPER COMPANY

323

**CONTAINER DIVISION
Springhill Plant**

FOR USE ONLY WITHIN THE COMPANY

Date July 15, 1961

Subject

**Supplement to Competition Report—
Structoglas, Grand Junction, Tennessee**

To

Mr. A. B. Damon

Supplementing our Competition Report mailed yesterday, Lennie Berry reported this morning that Owens Illinois Memphis contacted Structoglas yesterday afternoon and asked for an order. They were told that the next order would go to International Paper and Owens replied, "Don't give the order to IP and I will cut your price another \$2.00 per thousand square feet."

No additional order has been placed with our competitors and Lennie has an appointment with our customer early next week. After this call, further details concerning this situation will be forwarded.

**Bob
J. R. Grayson**

JRG:cp

**cc: Messrs. Snyder
Strine
Agar
McMahon
Fasley
Estes
Goolety
Jellay
Von Kerna**

DEFENDANTS' EXHIBIT 235

Document No. OWE-381

Description of document:

Intra-company correspondence

Date:

December 7, 1961

Addressed to:


William Laimbeer, then Sales Manager, Orlando, Florida, Sales Office, Forest Products Division, Owens-Illinois Glass Company.

Written by:

Johnny Schwarz, Jr., then Salesman, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Other data:

Copy addressed to M. H. Morgan, then Sales Service Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text 

Form NO-118

OWENS-ILLINOIS

INTRA-COMPANY (11) CORRESPONDENCE

OWE-281

Attention of

Mr. W. Laimbeer

Subject

ST. LEO ABBEY - St. Leo, Florida

PAPER PRODUCTS DIVISION
(Formerly National Container Corporation)
Jaimbeer/PLANT

December 7, 1961

Bill, I was very disappointed today in talking with Father James, Order of St. Benedict, concerning our prices on the express citrus cartons which we quoted in our quotation dated November 28, 1961.

By virtue of this memo I am advising you that we lost an order of 2500 1 3/5 bushel cartons to St. Joe Paper Company. Father James told me that St. Joe had offered him the truckload discount on the 1 3/5 bushel size for a 2500 quantity and that their price was \$794.00 per M compared to our price of \$937.57.

As far as the 3/4 bushel and the 1 bushel cartons are concerned Father James plans to order 5000 of each of these sizes immediately after the first of the year. We have approximately two weeks to get our prices competitive or he will be forced to give St. Joe the entire order. Our price on 2500 quantity of the 3/4 bushel was \$444.28 per M sets as compared to St. Joe's price of \$436.00. Our 1 bushel price in 5000 lots was \$494.47 compared to St. Joe's price of \$435.00 for 5000 lots. I would advise that St. Joe is also offering a truckload discount on the 5000 lot.

I certainly feel that Father James is above reproach and evidently does have these prices from St. Joe Paper Company. He did indicate to me that he appreciated the methods of our solicitation and he would be more than happy to give us the other two sizes provided that we were competitive. Would you please look into this and let me have your decision as soon as possible.

Thank you.


Johnny Schwarz

JS/ee

cc: Mr. M. H. Morgan ✓

DEFENDANTS' EXHIBIT 250

Document No. OWE-424

Description of Document:**Intra-company Customer Competitive Information Report****Date:****January 23, 1962****Addressed to:****Tom Brown, then Vice President, Marketing, Forest Products Division, Owens-Illinois Glass Company****Written by:****Leon Hardeman, then Sales Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company****Other Data:****Copies addressed to: Dan Brochin, then Manager, Production and Sales Analysis, Forest Products Division, Owens-Illinois Glass Company; and to T. M. Cox, Jr., then Vice President and Southeastern Region General Manager, Forest Products Division, Owens-Illinois Glass Company.****Exhibit Text** 

Form PP 1017 JWE

CUSTOMER COMPETITIVE INFORMATION

Mr. Tom Brown - Toledo FPO

TO: ~~XXXXXXXXXXXXXXXXXXXX~~

v/s Mr. Dan Brochin - Toledo FPO

Mr. I. M. Cox, Jr.

FROM: (please see insert) Atlanta FPO

Customer & Location		Plant & Salesman		Annual Potential		Report Date	
Union Yarn Mill Jacksomville, Alabama		Atlanta - H. Jess		\$40,000		1/23/63	
H. Miller General Manager		<input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		Information Received By: Leon Hardman			
Description		If Business Lost Why?		Price Quoted By O. L.		Total Amount of Order	
3 rd OL 4 1/2 x 19 x 27 St. Plain 350W ON		Price		847.00		\$25,000 Approx.	
						Container Corp. of America	
						770.00	

Remarks

CCA took a blanket order at our old selling price. The blanket order covers 1962 with a paper increase clause. This account has been a customer of Owens-Illinois since 1954. We did over \$24,000 in 1961.

Disposition

05-7-70

DEFENDANTS' EXHIBIT 254

Document No. OWE-443

Description of Document:

Intra-company Customer Competitive Information
Report

Date:

August 23, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was Tom Brown, Jr., Vice President, Marketing, Paper Products Division, Owens-Illinois Glass Company


Written by:

Sheldon Stearns, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company

Other Data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company

The terms "\$13.00 base" and "\$9.55 base" mean the area charge or board level equivalent of \$13.00 and \$9.55, respectively, per 1,000 square feet for 200 pound test single wall container board.

Exhibit Text 

Form 100-1012

OWE-143

TO: District Sales Manager, Toledo

c/o Mr. E. D. Dodd

Mr. H. H. DeSoo

CUSTOMER COMPETITIVE INFORMATION

FROM (Name or Source) Atlanta

Customer	Location	Plant & Salesmen	Annual Potential	Report Date
Bussell Manufacturing Co.	Alamogordo City, Ala.	Atlanta - Stearns	\$250,000	8/23/61
Information supplied by:	Position	<input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached	Information Received by	
Perry Womack	Purchasing Agent		Sheldon Stearns	
Description	If Business Lost Why?	Price Quoted By C.L.	Reported Competitors	Competitive Price

ALL BOX SIZES (32 ITEMS)

Dispositions

Remarks

This is the fourth reduction in this account in the last two months. This is one of our major accounts and was on a \$15.00 basis until the first reduction. This latest reduction by Mengol breaks down to a \$9.55 basis on #200 board.

We have not lost any orders but a 25% decrease in volume will be the result of the price reductions.

We did approximately \$55,000 with this account in 1960.

W. E. 254

DEFENDANTS' EXHIBIT 255

Document No. OWE-446

Description of document:Intra-company Customer Competitive Information
Report**Date:**

August 3, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Leon Hardeman, then Sales Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text

Form PP 101

OWE-446

CUSTOMER COMPETITIVE INFORMATION

TO: Divisional Sales Manager, Toledo

c/o Mr. E. D. Boyd

/ Mr. H. H. McRae

FROM: (plant or branch) Atlanta PP0

Customer & Location		Plant & Salesman		Annual Potential	Report Date
Gateway Luggage of Georgia, Inc., Information Supplies Co., Jackson, Georgia		Atlanta - Brinson		\$20,000 Information Received By Leon Hardeman	8/3/61
General Manager		If Business Lost Why?		Reported Competitors	
Description		Price Quoted By O. L.		Total Amount of Order	Competitors Price
25 1/2 x 7-7/8 x 15 RSC Taped 175#	Price	150.00 (175# Test)	300.00	Inland Container	149.00 (200# Test)
31 x 17-5/8 x 24 RSC Taped 200#	Price	377.00	377.00	Inland Container	359.00

Remarks

This is the second reduction given this account by Inland. We met the first reduction, but lost 44 boxes in the transaction. We are now meeting this reduction but we will again lose several thousand boxes.

As shown above, customer was given a 200# box for \$7.00H less than our price on 175# for the same box. This account bought about \$17,000 from us last year.

Disposition

DEFENDANTS' EXHIBIT 256

Document No. OWE-451

Description of document:

Intra-company Customer Competitive Information Report

Date:

July 31, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company


Written by:

Mike Planer, then Salesman, Salisbury, North Carolina, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company; and to K. E. Rosenbaum, then General Manager, Salisbury, North Carolina, Box Plant, Owens-Illinois Glass Company.

The term, "\$13.00 level" means the area charge or board level equivalent of \$13.00 per 1,000 square feet for 200 pound test single wall container board.

Exhibit Text 

OWE-151

CUSTOMER COMPETITIVE INFORMATION

FO: Divisional Sales Manager, Toledo

E. D. Dodd - Toledo

H. H. McRae - Jacksonville

K. E. Rosenbaum - Salisbury

FROM: (plant or branch) Salisbury - PPD

Customer	Name & Location	Plant & Salesman	Annual Potential	Report Date	
Pittsburgh Plate Glass Company, Shelby, N. C.		Salisbury - Planer	\$150,000	7-31-61	
Information Supplied By:	Position		Information Received By:		
Bill Miller	Purchasing Agent	<input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Att'd.	Mike Planer (Salesman)		
Description	If Business Lost Why?	Price Quoted By Q.L.	Total Amount of Order	Reported Competitors	Competitors Price
T-64 Die Cut Carton		\$13.00 level \$25.00 Set Up		Union Bag	Approx. 40% under O-I

Remarks:

This account has given us a major share of its business since the Shelby plant was opened. Union has never been a factor here before. This is the third large account Union has hit us in during the last month (other two: Amerotron, Southland Provision Co.). We will keep this business, we believe, by meeting the price.

def. Ex. 256

DEFENDANTS' EXHIBIT 260

Document No. OWE-469

Description of document.

Intra-company Customer Competitive Information
Report

Date:

July 7, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Milton Jess, then Salesman; Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

The phrase "base of \$9.50" and the term "\$8.15 base" mean the area charge or board level equivalent of \$9.50 and \$8.15, respectively, per 1,000 square feet for 200 pound test single wall container board.

Form PP 1017

JWE-469

CUSTOMER COMPETITIVE INFORMATION

FROM (plant or branch) Atlanta

TO: Divisional Sales Manager, Toledo ✓

c/c Mr. E. D. DoddMr. H. H. McRae

Customer	Plant & Location	Purchasing Agent	If Business Lost Why?	Price	Price Quoted By O.L.	Total Amount of Order	Reported Competitors	Competitors Price
Turnbull Cone Baking Information Supplied By:	Chattanooga, Tennessee Patton							
Don Jones								
RSC 25 x 10 x 25-7/8 C 200# Tape 4p1C				209.00	1570.00		Everyones in this area quoted. At this time, we do not know who received the order.	192.00
RSC 24 x 9 1/4 x 25-3/8 C 200# Tape 4p1C				198.00	1000.00			181.00
RSC 24-3/4 x 9-7/8 x 27 1/2 C 200# Tape 4p1C				217.00	1100.00			200.00
RSC 17-1/8 x 11-3/8 x 23-7/8 C 200# Tape 4p1C				196.00	1000.00			176.00
RSC 24-3/4 x 9-7/8 x 27 1/2 C 200# Tape 4p1C				217.00	1100.00			200.00
RSC 16-3/8 x 10-7/8 x 20 1/2 C 200# Tape 4p1C				186.00	950.00			170.00
					6730.00			

Disposition

Remarks

We had a blanket order for this customer's requirements during the first six months of this year. Requirements for the last six months were put out for bid in June and everyone took a shot at us.

We quoted our base of \$9.50 with a \$15.00 set up and were told the business went for the above prices which break down to about an \$3.15 base in our book.

4. 4. 260

DEFENDANTS' EXHIBIT 265

Document No. OWE-484

Description of document:

Intra-company Customer Competitive Information
Report

Date:

July 3, 1961

Addressed to:


Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President and General Sales Man-
ager, Paper Products Division, Owens-Illinois Glass
Company

Written by:

S. Stearns, then Salesman, Atlanta, Georgia, Box
Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice President,
Owens-Illinois Glass Company, and General Manager,
Paper Products Division, Owens-Illinois Glass Com-
pany; and to H. H. McRae, then Southeastern
Regional Sales Manager, Paper Products Division,
Owens-Illinois Glass Company, and General Manager,
Jacksonville, Florida, Box Plant, Owens-Illinois Glass
Company.

Exhibit Text 

Form PP 1017 - 10-1-60

JWE-484

CUSTOMER COMPETITIVE INFORMATION

To: Divisional Sales Manager, Toledo

c/o Mr. E. O. Dodd

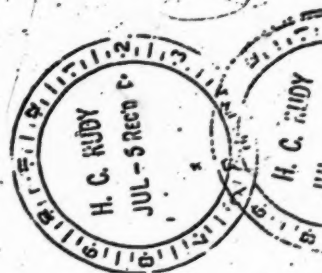
Mr. H. H. McGee

FROM: (Plant or branch) Atlanta

Customer Emerson S. Sessions Information Supplied By, C. H. Wood		Plant & Location Birmingham, Ala. Position Purchasing Agent		Annual Potential \$50,000 Information Received By S. Stearns		Report Date 7/3/61		
Description ALL REQUIREMENTS		If Business Lost Why?		Price Quoted By O.L.		Total Amount of Order	Reported Competitors St. Joe St. Regis	Competitors Price
		Price						

Remarks

Was submitted a report on 6/22 stating that account had been offered better prices and that we were quoting. Our new quota was approximately 10% off our original prices and we were told by account that we were still 10% high on some boxes and 15% high on others. Therefore, we gave a blanket order for the next year's business to St. Joe and St. Regis who quoted lower than us. We have done a great deal of design work for this account and have enjoyed good business without price playing much of a factor. However, with the price reductions being offered to this account by St. Joe, he felt we should let everyone quote and the results were disastrous.



44-235

DEFENDANTS' EXHIBIT 269

Document No. OWE-492

Description of document:

Intra-company Customer Competitive Information
Report

Date:

June 1, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President, and General Sales Man-
ager, Paper Products Division, Owens-Illinois Glass
Company

Written by:

Harold Frank, then General Manager, Atlanta,
Georgia, Box Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice President,
Owens-Illinois Glass Company, and General Manager,
Paper Products Division, Owens-Illinois Glass Com-
pany; and to H. H. McRae, then Southeastern
Regional Sales Manager, Paper Products Division,
Owens-Illinois Glass Company, and General Manager,
Jacksonville, Florida, Box Plant, Owens-Illinois Glass
Company.

JWE-192

TO: Divisional Sales Manager, Toledo
 c/o Mr. E. D. Dodd
 Mr. H. H. McGee

CUSTOMER COMPETITIVE INFORMATION

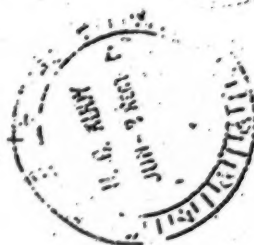
FRQs (plant or branch) Atlanta PPD

Customer & Location		Plant & Salesman		Annual Potential	Report Date
Gateway Luggage of Georgia, Inc. Jackson, Georgia		Atlanta - Brinson		\$20,000	6/1/61
Information supplied by:		Information received by:			
Mr. Henry Clayman General Manager		Harold Frank			
Description	If Business Lost Why?	Verbal <input type="checkbox"/> Per Letter Att'd.		Reported Competitors	Competitors Price
		Price Quoted By O.L.	Total Amount of Order		
25 1/2 x 7-7/8 x 14-7/8 RSC Taped 175#	Price	170.60	341.20	Inland Container	159.00
27-3/8 x 8 1/2 x 18-1/8 RSC Taped 200#	Price	223.05	223.05	Inland Container	210.00
17-3/8 x 15-7/8 x 25-7/8 RSC Taped 200#	Price	250.00	290.00	Inland Container	273.00

Remarks

Inland Container took an order for 44 boxes on three sizes from this account at the prices shown above. We have agreed to meet these prices and the customer assures us that we will receive future orders on these boxes. This account bought about \$17,000 from us last year.

Disposition



cl/ EL 269

DEFENDANTS' EXHIBIT 272

Document No. OWE-495

Description of document:

Intra-company Customer Competitive Information
Report

Date:

June 1, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President and General Sales Man-
ager, Paper Products Division, Owens-Illinois Glass
Company

Written by:

Harold Frank, then General Manager, Atlanta,
Georgia, Box Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice President,
Owens-Illinois Glass Company, and General Manager,
Paper Products Division, Owens-Illinois Glass Com-
pany; and to H. H. McRae, then Southeastern
Regional Sales Manager, Paper Products Division,
Owens-Illinois Glass Company, and General Manager,
Jacksonville, Florida, Box Plant, Owens-Illinois Glass
Company.

OWE-195

CUSTOMER COMPETITIVE INFORMATION

To: Division Sales Manager, Toledo

c/o Mr. E. O. Dodd

Mr. H. H. Hodge

FROM (plant or branch) Atlanta PPD

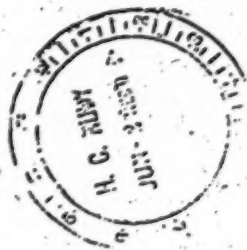
Customer Union Farm Mill Information Supplied By Mr. Henry Miller	Location Jacksonville, Alabama Position Purchasing Agent	Plant & Salesman Atlanta - Grodnar	Annual Estimated Information Received By Harold Frank	Report Date 6/1/61
Description 4 1/2 x 19 x 27 310L-Stratched 350# DM	If Business Lost Why?	Price Quoted By G. L. \$925.00	Total Amount of Order \$925.00	Reported Competitors St. Joe Paper

Remarks

We were forced to lower our price at the beginning of the year from \$979.00 to \$560.00 to stay competitive. St. Joe and Southern Container offered to supply this box for \$925.00 which we had to meet to keep the business. Later, St. Regis submitted a price of \$802.00 which we intended to meet, but when we went back we had to meet St. Joe's price of \$773.00. It appears that it will go even lower.

This account purchased about \$35,000 from us in 1960.

Ch. 22.272



DEFENDANTS' EXHIBIT 273

Document No. OWE-496

Description of document:

Intra-company Customer Competitive Information
Report

Date:

June 1, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President and General Sales Mana-
ger, Paper Products Division, Owens-Illinois Glass
Company

Written by:

Sheldon Stearns, then Salesman, Atlanta, Georgia,
Box Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice Presi-
dent, Owens-Illinois Glass Company, and General
Manager, Paper Products Division, Owens-Illinois
Glass Company; and to H. H. McRae, then South-
eastern Regional Sales Manager, Paper Products
Division, Owens-Illinois Glass Company, and General
Manager, Jacksonville, Florida, Box Plant, Owens-
Illinois Glass Company.

Exhibit Text

QWE-196

CUSTOMER COMPETITIVE INFORMATION

TO: Divisional Sales Manager, Toledo

Mr. J. D. Dodd

Mr. H. H. McRae

FROM (plant or branch) Atlanta PPD

Customer	Plant & Salesman	Annual Potential	Report Date		
Russell Manufacturing Co. Information Supplied By, i.e., Harry Hughes	Alexander City, Ala. Position Purchasing Agent	\$250,000 Information Received By Sheldon Starnes	6/1/61		
Description	If Business Lost Why?	Price Quoted Or O.L.	Total Amount of Order	Reported Competitors	Competitor Price
AIR ITEMS				St. Joe Paper	

Everybody in the Alabama area is shooting for and at this account. We are now reducing our prices for the third time in the past 3 to 4 weeks. Customer showed us St. Joe's quote on May 26th, which we will have to meet.

This account's prices are now 20% less than our original prices.



DEFENDANTS' EXHIBIT 274

Document No. OWE-497

Description of document:

Intra-company Customer Competitive Information
Report

Date:

June 1, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President and General Sales Man-
ager, Paper Products Division, Owens-Illinois Glass
Company

Written by:

Paul Grodner, then Salesman, Atlanta, Georgia, Box
Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice Presi-
dent, Owens-Illinois Glass Company, and General
Manager, Paper Products Division, Owens-Illinois
Glass Company; and to H. H. McRae, then South-
eastern Regional Sales Manager, Paper Products
Division, Owens-Illinois Glass Company, and General
Manager, Jacksonville, Florida, Box Plant, Owens-
Illinois Glass Company.

Form 100-10 DWE-197

To: Divisional Sales Manager, Toledo

c/o Mr. E. D. Dodd

Mr. H. H. McGee

CUSTOMER COMPETITIVE INFORMATION.

FROM (Name of branch) Atlanta PD

Customer Simon & Hodgdon Information supplied by JERRY SIMON	Location Birmingham, Alabama Position Purchasing Agent	Plant & Salesman Atlanta - Grodnar	Annual Potential \$45,000 Information Received by Paul Grodnar	Report Date 6/1/61
Description		If Business Lost Why?	Price Quoted By O.L.	Total Amount of Order
ALL ITEMS				
				Reported Competitors St. Joe Paper St. Regis Paper
				Competitors Price

Dispositions

Remarks

We were forced to reduce their prices 5% last month, now we are forced to reduce prices an additional 5% to maintain our position.

They gave token orders to St. Joe and St. Regis and threatened to cut us off if we didn't stay competitive.



del 5.274

DEFENDANTS' EXHIBIT 280

Document No. OWE-511

Description of document:

Intra-company Customer Competitive Information Report

Date:

May 16, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company


Written by:

L. Hardeman, then Sales Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

The term "\$10.00 base" means the area charge or board level equivalent of \$10.00 per 1,000 square feet for 200 pound test single wall container board.

Exhibit Text 

CUSTOMER COMPETITIVE INFORMATION

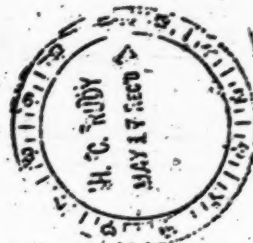
To: Divisional Sales Manager, Toledo ✓
 c/c Mr. E. D. Dodd
 Mr. H. H. McRae

FROM (plant or branch) Atlanta PPD

Customer Colonial Stores Information supplied by, Leland Glatrop		Location Atlanta, Georgia Position Assistant P. A.		Plant & Selection Atlanta - Dream <input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		Amount Potential \$50,000 Information Received By L. Hardman		Report Date 5/16/61	
Description ALL TEA BOXES		If Business Lost Why?		Price Quoted By O.L.		Total Amount of Order		Reported Competitors Union Bag	
								Competitive Price	

Remarks
 Because of competitive prices in this account, we were forced to drop our box prices to a \$10.00 base on all Tea boxes.

We took a mixed order for 15H Tea boxes at our reduced prices. This will undoubtedly lead to reductions on other boxes.



44-4-280

DEFENDANTS' EXHIBIT 281

Document No. OWE-513

Description of document:

Intra-company correspondence

Date:

May 12, 1960

Addressed to:

M. H. Morgan, then Sales Service Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company

Written by:

John Schwarz, then Salesman, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company

Other data:*

The initials "C.C.A." refer to the defendant Container Corporation of America.

Exhibit Text

*** Body of handwritten text is as follows:**

"Re: our recent conversation concerning C.C.A. price here. After seeing the quote & checking size, printing, board test, etc., I agreed to be competitive. The C.C.A. quote of 154.40 was dated 2/28/60 and signed by Mr. D. K. Newsome. Ready Picked deducted the difference from our invoice #33286. Would you please make the necessary arrangements for future invoicing at this figure? Thank you".

OVS-513

5/12

At: Mr. W. Morgan

Subj: Ready Picked Statue Co.
Plant City, Fla.

Re our recent conversation concerning the C.C.A. price here. After seeing the quote & checking size, printing, brand text, etc., I agreed to be competitive. The C.C.A. quote of 154.40 was dated 2/28/40, & signed by Mr. D.K. Newsum. Ready Picked deducted the difference from our invoice # 33286. Would you please make the necessary arrangements for future invoicing at this figure? Thank you.

J.S.

✓

46/3-01

DEFENDANTS' EXHIBIT 282

Document No. OWE-514

Description of document:

Intra-company Customer Competitive Information Report...

Date:

May 12, 1961

Addressed to:


Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Bernard Sirower, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company, and by Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text 

CUSTOMER COMPETITIVE INFORMATION

To: Divisional Sales Manager, Toledo

c/o Mr. E. D. Dodd

Mr. H. H. Moran

FROM: Field or Branch Atlanta PRO

Customer Filler Products Information Supplied By Mr. Sam Filler		Plant & Salesman Atlanta, Georgia Vice Pres. & General Manager		Annual Potential \$90,000 Information Received By 5/12/61		Report Date 5/12/61	
Description OVER ALL PRICE REDUCTION		Price Quoted If Business Lost Why?		Price Quoted By C. L.		Total Amount of Order	
		Price					
		Inland Container					
		Reported Competitors					
		Competition Prices					

Remarks

This has been our account 100% for the past 9 to 10 years. In 1960 we sold them \$30,000. Inland Container reduced the prices from 5% to 10% on all their sizes, which we were forced to meet. We have seen these quotes officially in writing.

Because of Inland's low prices, customer feels obligated to give Inland a portion of their business. At present, percentage not determined.

6/24/62



DEFENDANTS' EXHIBIT 283

Document No. OWE-515

Description of document:**Intra-company Customer Competitive Information Report****Date:**

May 12, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Paul Grodner, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text

Form PP 101

ONE-515

TO: Divisional Sales Manager, Toledo
 c/o Mr. E. O. Dodd
 Mr. H. H. McRae

CUSTOMER COMPETITIVE INFORMATION

FROM: (print or brand) Atlanta PPD

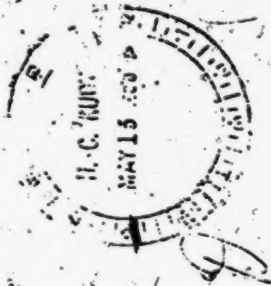
Customer & Location		Plant & Salesmen		Annual Potential	Report Date
Union Yarn Mill Jacksonville, Alabama Information Supplied By: Mr. Henry Miller		Atlanta - P. Grodnar <input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		\$40,000 (Information Received By: Paul Grodnar)	5/12/61
Description		Price Quoted By O.L.		Total Amount of Order	Reported Competitors
4 1/2 x 19 x 27 3/4" L St. 350# C/C (Always orders T/L or C/L)		\$560.00			Southern Container
If Business Lost Why?		Competitors Price		\$925.00	

Disposition

Southern Container, Houston, Mississippi offered Mr. Miller 3 1/2 x 6 month contract at \$925 per M. We were selling at \$500 per M which originally had been \$975.95 prior to St. Joe reducing the price. We have seen these quotas officially in writing.

In order not to lose our position, we have agreed to meet Southern Container's quotation, and did not lose any business.

4/14/293



DEFENDANTS' EXHIBIT 285

Document No. OWE-520

Description of document:**Intra-company Customer Competitive Information Report****Date:****May 10, 1961****Addressed to:****Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.****Written by:****S. Stearns, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.****Other data:****Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.****Exhibit Text**

OWE-520

CUSTOMER COMPETITIVE INFORMATION

To: Division Sales Manager, Toledo ✓

Mr. E. D. Dodd

Mr. H. H. McKee

FROM (plant or branch) Atlanta P90

Customer Russell Manufacturing Co. Information Supplied By: Parry Urdham		Location Alexander City, Ala. Position Purchasing Agent		Plant & Salesman Atlanta - Stoarns <input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		Amount Potential \$250,000 Information Received By S. Stoarns		Report Date 5/10/61	
Description	If Business Lost Why?	Price Quoted By O. L.	Total Amount of Order	Reported Competitors	Competitors Price				
ALL BUSINESS				Southern Container					

Remarks

Customer informed us that he had a reduction offer of 8% from Southern Container if he would split his business with them.

Customer bought \$60,000 from us last year and is a loyal account so we agreed to meet the 8% reduction. This may lead to an even greater reduction in the future because several companies want this account badly.



DEFENDANTS' EXHIBIT 286

Document No. OWE-521

Description of document:

Intra-company report

Date:

May 8, 1961

Addressed to:

H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Written by:

Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

[None.]

Exhibit Text 15

OWE-521

REPORT FOR MARKETING MEETINGMAIL TO: H. H. McRae - SECOND MONDAY EACH MONTHPLANT: AtlantaFORECAST FOR MONTH: 11,245,000DATE: May 8, 1961PRESENT ESTIMATE: 11,500,000GENERAL CONDITIONS:

The Atlanta Plant continues to enjoy good business. People seem to be building up larger inventories but they are shopping for prices in every corner. We are having to reduce prices in a number of our major accounts to stay competitive and it appears the downward trend will continue.

Our Alabama customers report to us that they are being offered 15% and 20% reductions. St. Joe Paper seems to be the leader of this movement. We are holding our position wherever possible on these reductions.

Atlanta area prices continue to slide downward but not quite as drastic as Alabama.

ORDERS LOST

CUSTOMER	AMOUNT OF ORDER	LOST TO	REASON
Lee Bros. Foundry	1,200.00	Head	Price Reduction
Aluminum Chair Products	4,500.00	Unknown	Price Reduction
Production Engineering	5% price reduction on all business to meet competition		
Lamson & Sessions	\$5,000 price reduction on \$4,400.00 order to meet competition		
Russell Mfg. Co.	8% price reduction on all business to meet competition		

MAJOR ACCOUNTS ADDED

NONE

NEW DEVELOPMENTS OR ITEMS OF UNUSUAL INTEREST

NONE

4/8/286

DEFENDANTS' EXHIBIT 290

Document No. OWE-534

Description of document:

Intra-company Customer Competitive Information Report

Date:

June 22, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Milton Jess, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text

OWE-534

TO: Divisional Sales Manager, Toledo
 c/o Mr. E. D. Dodd
 Mr. H. H. McRae

CUSTOMER COMPETITIVE INFORMATION

FROM: (Name or branch) Atlanta

Customer & Location		Plant & Salesman		Annual Potential	Report Date
Carolyn Chenilles Chattanooga, Tennessee		Atlanta - Joss		\$100,000	6/22/61
Information Supplied By:		Information Received by			
Mr. David Holovnick		Hilton Joss			
Description	If Business Lost Why?	Price Quoted By D.L.	Total Amount of Order	Reported Competitors	
				Competitors Price	
ALL OF THEIR CORRUGATED BUSINESS				Mangel Co. Union Bag	

Remarks

Both Mangel and Union keep lowering their prices once or twice a week, and have been for the past three weeks. We know we can't possibly make money running their business, but we don't want to give up our position due to the good volume.

For some unknown reason it appears that we have failed to report this account previously.



Ref EL 290

DEFENDANTS' EXHIBIT 291

Document No. OWE-536

Description of document:

Intra-company Customer Competitive Information Report.

Date:

June 22, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Paul Grodner, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company, and by Leon Hardeman, then Sales Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text

Form PP 16

OWE-536

To: Divisional Sales Manager, Toledo

c/o Mr. E. D. Dodd

Mr. H. H. McRae

CUSTOMER COMPETITIVE INFORMATION

From (name or branch) Atlanta

Customer Union Yarn Mills Information supplied by, Mr. Henry Miller	& Location Jacksonville, Alabama Vice President and General Manager	Plant & Salesman Atlanta - Goodhue <input type="checkbox"/> Verbally <input type="checkbox"/> By Letter Attached	Annual Potential \$10,000 Information Received By Paul Grodnar & Leon Hardman	Report Date 6/22/61
Description Carload 4 1/2 x 19 x 27 3" O/L 3500# DM	If Business Lost Why? None Lost	Price Quoted By O.L.	Total Amount of Order	Reported Competitors Southern Containor St. Regis St. Joe
Remarks			Competitors Price	

Disposition

We had to reduce our prices in this account three (3) times since 5/12/61.

Our original price was \$979.45. It was reduced to \$925 by Southern Containor. St. Regis came back a week to 10 days later at \$905. Now St. Joe came in at \$770, which we were forced to meet or lose out completely.

Customer has shown us formal quote on each occasion. Those reductions will cost us approximately \$0,000 to \$10,000 in total volume.

Ref. to 2-71



DEFENDANTS' EXHIBIT 293

Document No. OWE-538

Description of document:**Intra-company Customer Competitive
Information Report****Date:**

June 22, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Bernard Sirower, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company, and by Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

OWE-538

CUSTOMER COMPETITIVE INFORMATION

To: Divisional Sales Manager, Toledo

Re: E. O. Rood

H. N. J. Filler

FROM: (plant or branch) Atlanta

Customer Name <u>Filler Products, Inc.</u>		Plant & Location <u>Atlanta, Georgia</u>		Annual Potential <u>\$90,000</u>		Report Date <u>6/22/61</u>
Information Supplied By <u>Mr. J. J. Filler</u>		Position <u>Owner & President</u>		Information Received By <u>Garnard Stroner & Harold Frank</u>		
Description <u>PRICE REDUCTION ON ALL THEIR BOXES</u>		If Business Lost Why? <u>Price</u>		Price Quoted By Q. L.		Reported Competitors Price
				Total Amount of Order		Competitors Price
				Inland Container		

Remarks

After reducing their prices twice in May, Inland received a minor share, 10% to 12%, of the business. Now they have further reduced their prices an additional 5% to get a larger percentage, but all it did was cause us to meet their prices.

This account is now 12% to 15% less than it was in April.



DEFENDANTS' EXHIBIT 295

Document No. OWE-540

Description of document:

Intra-company Customer Competitive
Information Report

Date:

June 22, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

The term "\$13.00 base" means the area charge or board level equivalent of \$13.00 per 1,000 square feet for 200 pound test, single wall container board.

Exhibit Text

CUSTOMER COMPETITIVE INFORMATION

OWE-54U

TO: Divisional Sales Manager, Toledo
c/c Mr. E. D. Dodd
J. C. Hall, Dallas

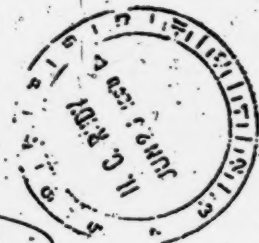
FROM: (plant or branch) Atlanta

Customer Gordon Foods Information supplied by, Mr. Marvin Hanby	Plant & Location Atlanta - Georgia Director of Purchases	Plant & Salesman Atlanta - House Verbelly <input type="checkbox"/> Per Letter Attn'd.	Annual Potential \$250,000 Information Received by Harold Frank	Report Date 6/22/61
Description PRICE REDUCTION ON ALL THEIR CORRUGATED REQUIREMENTS	If Business Lost Why? At present, no business lost. Maintained at lower prices.	Price Quoted By O.L. Total Amount of Order	Reported Competitors Gaylord Inland (See Below)	Competitors Price

Disposition

Remarks

Inland quoted on a \$13.00 base plus \$25.00 set-up less 15%.
Gaylord quoted on a similar price structure with 20% reduction.



DEFENDANTS' EXHIBIT 303

Document No. OWE-559

Description of document:

Intra-company correspondence

Date:

March 27, 1961

Addressed to:

E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

K. E. Rosenbaum, then General Manager, Salisbury, North Carolina, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: H. C. Rudy, then Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company; H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company; and to D. B. Brittain, then Sales Manager, Salisbury, North Carolina, Box Plant, Owens-Illinois Glass Company.

The terms "\$13.00 base" and "\$12.35 base" mean the area charge or board level equivalent of \$13.00 and \$12.35, respectively, per 1,000 square feet for 200 pound test single wall container board.

Form NC-113

OWENS-ILLINOIS
INTRA-COMPANY (1) CORRESPONDENCE
 March 27, 1961

Attention of Mr. E. D. Dodd - Toledo
 cc: Mr. H. C. Rudy - Toledo
 Mr. H. H. McKee - Jacksonville
 Subject Mr. D. S. Brittain

PAPER PRODUCTS DIVISION
 (Formerly National Container Corporation)
 KANSAS CITY PLANT

PRICES

We are very much concerned over the price trend in the area we serve. For the past several months prices have been declining steadily in most of the accounts we sell. In numerous major accounts box prices are from 15% to 25% off the \$13.00 base price. There does not seem to be any definite pattern in the price reductions as an account being sold on \$13.00 may be reduced 5% and another account on the \$12.35 base may be reduced 7%.

We are following the downward trend using as a guide information supplied us by our customers and salesmen. If the trend continues we cannot hope to operate at a profit in the months ahead.

K. E. Rosenbaum
 K. E. Rosenbaum


KER:ch

DEFENDANTS' EXHIBIT 311

Document No. OWE-608

Description of document:**Intra-company Customer Competitive
Information Report****Date:**

November 26, 1960

Addressed to:**Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.****Written by:****W. E. Reagan, then Salesman, Memphis, Tennessee, Box Plant, Owens-Illinois Glass Company.****Other data:****Copy addressed to J. A. Cobb, then South Central Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company.****Exhibit Text** 

OWE-608

CUSTOMER COMPETITIVE INFORMATION

FROM: Memphis Plant

DIVISIONAL SALES MANAGER, TOLEDO

cc: Mr. J. A. Cobb, Reg. Div. Sales Manager

2/9/61

11/26/60

\$ 12,000.00

No. Main St., Memphis, Tenn.

Memphis - Reagan

Gordon's Foods

W. E. Reagan

Buyer

Robert Cooney

#3
#25 Carton
#25 Tray
#39 Carton
#39 Tray

Buyer said he had much lower price.
\$ 162.80M
192.40M
39.55M
181.70M
45.45M

St. Joe

\$1000.00

Bob Cooney said "St. Joe really had a low price."

Ref 6-311



DEFENDANTS' EXHIBIT 314

Document No. OWE-639

Description of document:

Intra-company Customer Competitive Information Report

Date:

February 28, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company; and to E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company.

Exhibit Text

OWE-639

CUSTOMER COMPLAINT INFORMATION

To: District Sales Manager, Toledo
c/o J.T. H. Co., Inc.
Attn: Mr. B. B. Boud

FROM: (Please use branch) Atlanta, PPD

Customer Filler Products Carl Cohen	Location Atlanta, Georgia Position Purchasing Agent	Salesman Atlanta - Simpson X Verbal Per Letter and Tel.	Annual Potential \$100,000 Information Received By Harold Frank	Report Date 2/2/61
Description 20-3/8 x 16-3/4 x 30 - 2000 St. tube Display with Gray wood grain outside liner.	It Business Unit Ship	Price Quoted By O.T.	Total Amount of Order \$582.00	Quoted Competitors Gaylord \$273.10

Remarks
To have sold this customer 500 orders for this item at our quoted price of \$582.00. On the third order Gaylord was allowed to quote and offered to sell this display to them for \$273.10.

We enjoy 100% of this accounts business and do not want any one else running boxes for them so we agreed to meet this extremely low price. We received the order for 500 displays at the lower price.

DEFENDANTS' EXHIBIT 341

Document No. SRP-85

Description of document:

Internal Memo

Date:

3/7/61

Addressed to:

S. B. Marks, General Manager, St. Regis, Atlanta

Written by:

M. Gilleland, Salesman, St. Regis, Atlanta

[Other data:]

None.]

Exhibit Text

* Typed copy of Exhibit Text appears at page 2 of Exhibit.

PHONE JANUARY 6-0000
TYPE AT-000SP-85
MEMO30 ELLIOTT ST. N.W.
ATLANTA 9, GA.

ATLANTA CONTAINER CORPORATION

TO: <i>M. S. B. Marks</i>	FROM: <i>W. H. E. E. E. E. E.</i>	DATE: <i>3/7/61</i>
SUBJECT: <i>Old Kent Healthy Growers</i>	COPY TO:	

Please quote in following items for
subject company - Our prices were
higher than competition. They showed me
run down on prices and are giving below.

4 C - lots 10,000 -

actor to Container

CCIA

St Joe - Fayland

117.50

111.50

110.00

107.00 plus.

2 C - lots 10,000

78.00

76.30

75.00

74.00

1 C - lots 10,000

82.00

77.60

74.65

73.00

3 C - lots 1000

Our price quoted

64.75 lots 1000


1000 of these will last
about 7 year.

Ref 4, 341

← 30 pi - →

DEFENDANT'S EXHIBIT 341

Continued

Continued Exhibit Text 

SRP - 85

M E M O

ATLANTA CONTAINER CORPORATION

TO: Mr. S. B. Marks

FROM: W.M. Gilleland

SUBJECT

COPY TO

DATE

Gold Kist Poultry Growers3/7/61

Please requote on following items for subject company - Our prices were higher than competition. They showed me run down on prices and am giving below -

4C - lots 10,000 -

Atlanta Container

CCA

St Jge

Gaylord

117.50

111.50

110.00

107.00 plus.

2C - lots 10,000

78.00

76.30

75.00

74.00

1C - lots 10,000

82.00

77.60

74.65

73.00

3C - lots 1000

Our price quoted

64.75 lots 2500

1000 of these will last about 1 year.

DEFENDANTS' EXHIBIT 342

U. S. v. Container Corporation et al.
Document No. SRP-98

Description of document:

Internal memo

Date:

June 20, 1961

Addressed to:

G. D. Robinson, Div. General Sales Manager, St.
Regis, Atlanta.

Written by:

S. B. Marks, General Manager, St. Regis, Atlanta.

Other data:

W. L. Diggs, Division Manager.

Form 10-20-55 100 1-55 Printed in USA 100

1 PP-98

INTER-COMPANY CORRESPONDENCE

FROM Sydney B. Marks

LOCATION

Atlas's Container Division

DATE

June 20, 1961

TO

Mr. G. D. Robinson
St. Regis Paper Co.
4600 Brookpark Road
Cleveland 34, Ohio

cc: W. L. Diggs

Subject: Carolyn Chenille, Chattanooga, Tenn.

Dear Mr. Robinson:

We were selling this account 90% of their requirements with sales last year amounting to \$75,000.

They operate plants at Dalton, Ringgold, Ga., Sweetwater, Tenn., and Saluda, S. C.

Our selling price has been 3% off the \$13.00 level plus charges on the Georgia Manual.

About October of last year Ohio-Illinois and Mengel cut the price approximately \$1.00 to \$2.00 per M Sq. Ft. This price remained until about six weeks ago and was cut again by Mengel, Union and Inland. The current level is now close to the \$10.00 base.

In every instance when price is cut he gives them an order and the customer then forward to me the original quotation or acknowledgement of this order showing the new low price for us to meet or reject.

Very truly yours,

Sydney B. Marks

SBM:hp

DEFENDANTS' EXHIBIT 346

Document No. SRP-120

Description of document:

Salesman's Report of Interview

Date:

June 28, 1961

Addressed to:Pete Petree (J. W. Petree), Sales Manager, St. Regis,
Jacksonville**Written by:**Daniel (P. A. Daniel), St. Regis Sales Representative,
St. Regis, Jacksonville**Other data:***Initials "dg" are Mrs. Dot Green, former secretary,
St. Regis, JacksonvilleNote (crossed out): "12.35 less 9%
total set up = \$316.70".**Exhibit Text**

* Typed copy of Exhibit Text appears at page 2 of Exhibit.

(SR)

ST. REGIS PAPER COMPANY

CONTAINER DIVISION

Jacksonville, Florida

PAPER CO.

CONTAINER DIVISION

CHECK HERE FOR
URGENT ACTION☒

FIRM NAME Wagener Mfg. Co. SKP-170 JUN 30 1964 6/22/64
 ADDRESS Wagener, S.C.
 PERSON INTERVIEWED Howard Baunstein TITLE P/A TYPE OF BUSINESS Textile
 REPORTED BY Daniel
 REPORT TO Pete Petree DEPARTMENT

Union Bag ~~put~~ put some new prices in Wagener 6/22/64. We weren't out so bad on the small sizes but on the large were way high again. Howard changed me this quotation & on their #54 LF one price was \$346.40 & Union Bag was \$316.55. Howard said when prices settle back down we will get some business from them & he also said I was the only one he would let see Union's price quote. Our prices were all good until U.B. came in last evening.

12.35

less 970


told it up 1316.70

REQUESTED
DISPOSITION

DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

DEFENDANTS' EXHIBIT 346**Continued****Continued Exhibit Text** 

SRP-120

ST. REGIS PAPER COMPANY
Container Division
Jacksonville, Florida

Check Here For
Urgent Action ☒

RM Name	Wagener Mfg. Co.	Date	6/28/61
Address	Wagener, S.C.		
Person Interviewed	Howard Braunstein	Title	P/A
		Type of Business	Textile
		Reported By	Daniel
Report To	Pete Petree	Department	

Union Bag put some new prices in Wagener 6/27/61. We weren't cut so bad on the small sizes but on the large we are way high again. Howard showed me their quotation & on their #54 LF our price was \$346.40 & Union Bag was \$316.55. Howard said when prices settle back down we will get some business from them & he also said I was the only one he would let see Union's price quotations. Our prices were all good until U.B. came in last evening.

Ref. R. 346-23

DEFENDANTS' EXHIBIT 354

Document No. SRP-132

Description of document:**Salesman's Report of Interview****Date:****June 27, 1960****Addressed to:****W. L. Diggs, General Manager, St. Regis, Jacksonville****Written by:****Gene Platt, Sales Representative, St. Regis, Jacksonville****Other data:*****Initials "JWP" are J. W. Petree, Sales Manager;****Page 2—Initials "DH" are Don Huntley, Sales Service Manager;****Page 2—Initials "WLD" are W. L. Diggs, General Manager; all St. Regis, Jacksonville****Page 2—Photograph is International Paper truck backed up at Rosenthalt Packing Shed.****Exhibit Text**

*** Typed copy of Exhibit Text appears at page 3 of Exhibit.**

JACKSONVILLE
DIVISIONCORRUGATING DIV. ☒FLEXIBLE PACKAGING DIV. ☐CHECK HERE FOR
URGENT ACTION ☐

GROY IRS CONTAINER COR. ORATION

FIRM NAME Rosenthalt Packing Shed

SPC-132

DATE 6/27/60

ONES Lt Pleasant, S.C.

PERSON INTERVIEWED Mr Aaron Rosenthalt

TITLE Owner

TYPE OF BUSINESS (Tomato) Produce

REPORTED BY Gene Platt

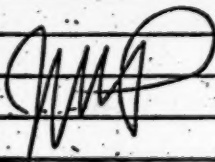
REPORT TO Mr W.L. Dicks

DEPARTMENT Sales

At the start of the tomato season I contacted the above ~~XXXXXX~~ prospect with the intentions of selling him corr. shipping cartons for the tomatoes to be sent north.

Picked up a Sample Carton that he used the previous season furnished by International Paper Co. Heagtown, A.C. The combination of board used was 47-42-47, the selling price was \$34.77 in truck load orders. I talked to Brad James, our Sales Service Mgr. was told to meet price. Mr Rosenthalt informed me that he would share this business with St. Regis, check next few days for orders. When I checked back I was informed that SP had reduced their price to 338.70 per M, I asked Mr Rosenthalt if this was a stock box or Printed Carton to his spec's. I was informed that this was the same printed Carton, 2 pl. 2 col. I checked again with Mr James & again was told to meet price with same board combination not the sample of 47-47-69, Again Mr Rosenthalt stated that both Quad & SP made a statement that they would do better if forced to. I pushed this issue hard to see what the

DO NOT USE THIS SPACE



ORIGINAL

JACKSONVILLE
DIVISIONCORRUGATING DIV. ☐FLEXIBLE PACKAGING DIV. ☐SRP-132
CHECK HERE FOR
URGENT ACTION ☐

GROVEERS CONTAINER CORPORATION

FROM
NAME

DATE

PERSON
INTERVIEWED

TITLE

TYPE OF
BUSINESSREPORTED
BYREPORT
TO

DEPARTMENT

better price & other benefits would be.
I was told by Mr. Rosenthal that he was under
the opinion the price would be 337.40 per M &
a trailer would be backed up to his shed & left
here to be unloaded as needed, every two or
3 days I would bring in a new load & take
away the empty trailer. I discussed this with
Mr. Wiggs & he stated we would not be
interested in this type of selling at this time
enclosed photo of trailer Backed at Rosenthal
shed, Mt. Pleasant, A.C.

I did the best I could with this account.
will be glad to try again next season.

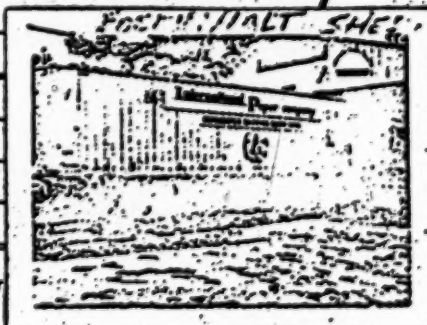
- Here -

RECEIVED
DEPOSITION

DO NOT USE THIS SPACE

FORM 1-61 10-10-50

SALESMAN'S REPORT



SRP-132

ST. REGIS PAPER COMPANY
Container Division
Jacksonville, Florida

Check Here For
Urgent Action ☐

NAME	Rosenthalt Packing Shed		Date	6/27/60
Address	Mt. Pleasant, S.C.			
Person Interviewed	Mr. Aaron Rosenthalt	Title	Owner	Type of Business (Tomato) Produce
Report To	Mr. W.L. Diggs	Department	Sales	Reported By Gene Platt

At the start of the tomato season I contacted the above prospect with the intentions of selling him corr. shipping cartons for the tomatoes to be sent north. Picked up a sample carton that he used the previous season furnished by International Paper Co., Georgetown, S.C. The combination of board used was 47-42-47, the selling price was \$346.77 M in Truck load orders. I talked to Brad James, our sales service mgr. Was told to meet price. Mr. Rosenthalt informed me that he would share this business with St. Regis, check next few days for order, when I checked back I was informed that IP had reduced their price to 338.70 Per M. I asked Mr. Rosenthalt if this was a stock box or Printed Carton to his spec's. I was informed that this was the same printed carton. 2 Pal. 2 col. I checked again with Mr. James & again was told to meet price with same board. Combination not the sample of 47-47-69, again Mr. Rosenthalt stated that both Mead and IP made a statement that they would do better if forced to. I pushed this issue hard to see what the better price & other benefits would be. I was told by Mr. Rosenthalt that he was under the opinion the price would be 337.40 per M & a trailer would be backed up to his shed and left here to be unloaded as needed, every two or 3 days IP would bring a new load & take away the empty trailer, I discussed this with Mr. Diggs & he stated we would not be interested in this type of selling at this time, enclosed photo of trailer Parked at Rosenthalt shed, Mt. Pleasant, S.C.

I did the best I could with this account, will be glad to try again next season.

Gene -

DEFENDANTS' EXHIBIT 355

Document No. SRP-143

Description of document:

Salesman's Report of Interview

Date:

September 5, 1961

Addressed to:


J. W. Petree, Sales Manager, St. Regis, Jacksonville

Written by:

C. E. Newcomer, Sales Representative, St. Regis,
Jacksonville

Other data:*

Initials "DH" are Don Huntley, Sales Service Manager; Initials "JWP" are J. W. Petree, Sales Manager; both St. Regis, Jacksonville.

Exhibit Text 

* Typed copy of Exhibit Text appears at page 2 of Exhibit.



ST. REGIS PAPER COMPANY
CONTAINER DIVISION
Jacksonville, Florida

CRP-143

CHECK HERE FOR
URGENT ACTION ☐

FIRM NAME GOLD HEST PECAN CROWNS DATE 9-5-61

ADDRESS 605 Church St. Waycross, Ga.

PERSON INTERVIEWED Carl O'Neal TITLE mgr. TYPE OF BUSINESS Pean

REPORTED BY W. J. Petrie

REPORT TO J. W. Petrie DEPARTMENT

Carl called me today. (Did not answer charges) and ask for quote on 20m 24-16 cells AND 6m 24-16. CCA + Gaylord. These are the items that he did not put out for bid last year in order for me to get the business, but he is having to request quotes this year from CCA + Gaylord.

Carl informed me that he received ^{partial} requests from Union Bag last Friday - 9-1-61, on the 35m 30th most paper that he has already given the contract to CCA, and Union Price was approx \$15.00 per m less than the quote that we submitted. He also said that Gaylord was below us, but did not say how much.

REQUESTED
DISPOSITION


DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

DEFENDANTS' EXHIBIT 355

Continued

Continued Exhibit Text 

SRP-143

ST. REGIS PAPER COMPANY
Container Division
Jacksonville, Florida

Check Here For
Urgent Action ☐

Firm Name	Gold Kist Pecan Growers		Date	9-5-61	
Address 605 Church St. Waycross, Ga.					
Person Interviewed	Carl O'Neal	Title	Mgr.	Type of Business	Pecan
				Reported By	Newcomer
Report To	J. W. Petres		Department		

Carl called me today (Did not reverse charges) and ask for quotes on 20m 24-1b cello and 6m 24-1b. Cello Tray Pak Boxes. These are the items that his did not put out for bid last year in order for me to get the business, but he is having to request quotes this year from CCA & Gaylord.

Carl informs me that he received a verbal quote from Union Bag last Friday - 9-1-61 on the 35m 30# meat boxes that he has already given the contract to CCA, and Unions price was app. \$15.00 per m less than the quote that we submitted. He also said that Gaylord was below us, but did not say how much.

DEFENDANTS' EXHIBIT 358*U. S. v. Container Corporation et al.***Document No. SRP-151****Description of document:****Salesman's Report of Interview****Date:****December 2, 1960****Addressed to:****Mr. W. L. Diggs, General Manager, St. Regis, Jacksonville****Written by:****Gene Platt, Sales Representative, St. Regis, Jacksonville****Other data:****Note at bottom, written by W. L. Diggs, General Manager, St. Regis, Jacksonville, reads as follows:****"Refer estimates 33/26/33 Body Double Wall
42/42 Cover Single Wall****12.35 + 25.00****(Less 10%****(After Setup"****Exhibit Text**

JACKSONVILLE
DIVISION

SRP-151

CORRUPTING DIV. ☒

FLEXIBLE PACK

NO DIV. ☐CHECK HERE FOR
URGENT ACTION ☐

GROV. LRS CONTAINER CORPORATION

FIRM
NAME

Cook & Company, Inc.

DATE 12/2/60

ADDRESS

Hazlehurst, Ga.

PERSON
INTERVIEWED

Mr Wade Thornton

TITLE

Gen. Mgr

TYPE OF
BUSINESS

Tile

REPORTED BY Gene Platt

REPORT TO Mr W.L. Digge

DEPARTMENT

Sales

Made call on above customer today to adjust quotes previously submitted. Mr Thornton made this statement "of all the companies calling on me, I would like to do business with St. Regis Paper Company over all, I cannot do this unless the price is the same or lower as this is my instructions from Headquarters". I assured Mr Thornton that we would do everything possible to meet the prices but I would like to see these prices, with this Mr Thornton pulled out of his file his last invoice, dated Nov. 8, 1960, Union Bag, this price he showed me was for 5H Tel. Body, 47 3/4 X 23 3/4 X 12 Double W all 33/26/33, "C" flute, 200 test. \$556.30 per M. our previous quote was \$ 475.75 for single wall, Union bag \$54.00 under our quote on double wall, also \$54.00 under our price on single wall, if you will review this and we can meet this price it without a possible doubt that we will get this business, please believe me this is not just talk but a definite commitment from Mr Thornton that we to get this business, enclosed request for quote. please advise.

Gene

REVISIT
REQUISITION

DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

Jef. E. 358

DEFENDANTS' EXHIBIT 362**Document No. SRP-162****Description of document:****Salesman's Report of Interview****Date:****February 3, 1962****Addressed to:****J. W. Petree, Sales Manager, St. Regis, Jacksonville****Written by:****W. H. Dresback, Sales Representative, St. Regis, Jacksonville****Other data:****Initial "P" is J. W. Petree, Sales Manager; Initials "jh" are Mrs. Jean Harris, Secretary; both St. Regis, Jacksonville.****Note reads: "Get files & Return to me."**

ST. REGIS PAPER COMPANY
CONTAINER DIVISION
Jacksonville, Florida

STP-162

CHECK HERE FOR
URGENT ACTION ☐

General Electric Co.

ST. REGIS PAPER CO.
CONTAINER DIVISION

DATE 2/3/62

Hendersonville, N. C.

FEB 3 1962

J. P. Wright

TYPE OF
BUSINESSREPORTED
BY

Dresbeck

J. W. Petree

DEPARTMENT

The above company has received four quotations from us in the last two months and we have been exceptionally high on everyone. I sent you a report dated 1/10/62 stating our quote of 12/30 was 15% high on the base and 32% high on the SU. Along with this report was a request for quotation. The quote was made and we were still approximately the same percentage out of line, our quotation dated 1/16/62, it was for 3000 cartons per week. Had we been competitive on this bid, I think customer might have sampled pressed and possibly given us the business if it worked out. They will be asking for bids on this particular carton again in April, has already placed this order. The next two quotations, 1/27 and 1/19 wa. a also as much out of line. Please review your pricing on this account so the next time we get a request for quotation, we might be in line. Customer says he would like to do some business with us, the is a \$225,000.00 account. His present suppliers are Gay, TC, DR and Container. Attached are copies of the above mentioned quotations. If you have any questions, please adv

RECEIVED

DO NOT WRITE IN THESE SPACES

CALLED FOR REPORT OF INTERVIEW

ORIGINAL

DEFENDANTS' EXHIBIT 363

Document No. SRP-163

Description of document:**Salesman's Report of Interview****Date:****December 19, 1961****Addressed to:****J. W. Petree, Sales Manager, St. Regis, Jacksonville****Written by:****P. A. Daniel, Sales Representative, St. Regis, Jacksonville.****Other data:*****Initials "JWP" are J. W. Petree. Lined-over note reads: "Get files and return to Petree"****Other note reads: "Requote at 13.60 + 25.00 12-28-61"****Exhibit Text**

*** Typed copy of Exhibit Text appears at page 2 of Exhibit.**

(SR)

ST. REGIS PAPER COMPANY
CONTAINER DIVISION
Jacksonville, Florida

SRP-163

CHECK HERE FOR
URGENT ACTION ☐

FIRM NAME Edmont Mfg. Co. DATE 12/18/61
 ADDRESS Chickamauga, Ga.
 PERSON INTERVIEWED Ken Hoffman TITLE Gen. Mgr. TYPE OF BUSINESS Textile
 REPORTED BY Daniel
 REPORT TO Pete Petree DEPARTMENT _____

Our quotation of Nov. 7th was competitive until Weyerhaeuser & Mead quoted. Weyerhaeuser is about \$5.00 per ft cheaper than we are down the line. I saw Mead quote & they really cut the price. On #2's our price \$178.75, Mead \$168.00 on #3's our price \$202.35, Mead \$186.40. on #4's our price \$251.75, Mead \$231.35. On #8 our price \$375.30, Mead is \$343.75. Needless to say he is now buying from Mead, Durham, N.C. Their quote was dated in Nov. & the salesman is (name lost), I couldn't see the rest of the quotation.

REQUESTED
DISPOSITION

DO NOT USE THIS SPACE

SALES AND SERVICE DEPT. OF INTERVIEW

ORIGINAL

396

DEFENDANT'S EXHIBIT 363

Continued

Continued Exhibit Text

SRP-163

ST. REGIS PAPER COMPANY
Container Division
Jacksonville, Florida

Check Here For
Urgent Action ☐

Arm and	Egmont Mfg. Co.	Date	12/19/61
Address	Cheraw, S.C.		
Person Interviewed	Ken Meffner	Title	Type of Business Textile
			Reported By Daniel
Report To	Pete Petres	Department	

Our quotation of Nov. 7th was competitive until Weyer. & Mead quoted. Weyer is about \$5.00 per M cheaper than we are down the line. I saw Mead's quote & they really cut the prices. On #2 1/2 our price \$178.75, Mead \$164.00 on # 3 1/2 our price \$202.35, Mead \$186.40, on # 4 1/2 our price \$251.75, Mead \$231.35, on #8 our price \$375.35. Mead is \$343.75. Needless to say he is now buying from Mead, Durham, N.C. Their quote was dated in Nov. & the Salesman is Crane, I couldn't see the rest of the quotation.

DEFENDANTS' EXHIBIT 365

Document No. SRP-179

Description of document:

Salesman's Report of Interview

Date:

August 12, 1960

Addressed to:

W. L. Diggs, General Manager, St. Regis, Jacksonville

Written by:J. W. Petree, Sales Representative, St. Regis,
Jacksonville**Other data:**

Initials "WLD" are W. L. Diggs, General Manager;
Initials "DH" are Don Huntley, Sales Service Man-
ager; Initials "DG" are Mrs. Dot Green, Secretary;
Initials "WLD" are W. L. Diggs, General Manager;
all St. Regis, Jacksonville. Note reads: "Quote 12.35-
25.00"

JACKSONVILLE DIVISION ☒ CORRUGATING DIV. ☒ FLEXIBLE PACKAGING DIV. ☐ CHECK HERE FOR URGENT ACTION ☐

GROV ERS CONTAINER COF ORATION

FILE NO. *SRP-179* ST. REGIS PAPER CO. DATE 8-12-60

ADDRESS *Columbia, S. C.* CONTAINER DIVISION

PERSON INTERVIEWED *Mr. Adams* TITLE *P. A.* AUG 16 1960 TYPE OF BUSINESS Textile

REPORTED BY *Petree*

REPORT *Bill Diggs* DEPARTMENT *Sales Mgr.*

Buyer said Union Bag took the contract. They were between 10 & 20% under everyone. Said our price was not the highest but we were in the middle. The contract runs for 6 months. He will give us an opportunity to quote on the next go around.

Pete

*Quoted
12.25 - 25.00*

REQUESTED DISPOSITION

DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

DEFENDANTS' EXHIBIT 369

Document No. SRP-205A

Description of document:

Internal Memo

Date:

October 3, 1960

Addressed to:

W. L. Diggs, General Manager, St. Regis, Jacksonville

Written by:J. W. Petree, Sales Representative, St. Regis,
Jacksonville.**Other data:**

"Bill D." at top of report is W. L. Diggs. D. Huntley is Don Huntley, Sales Service Manager, St. Regis, Jacksonville.

Note at top reads: "Huntley Refer price cards to Bill D. Sales Service D. Huntley"

Note at bottom reads: "10/14/1960 Because of the very small volume we will not reduce our prices. 10/14/1960"

Exhibit Text

INTER-OFFICE CORRESPONDENCE

Bill Dicks
From Pete Petros

ST. REGIS PAPER CO.
CONTAINER DIVISION

Location

Location

Subject Enclsior Underwear OCT 5 1960
Saluda, S. C.

Date 10-3-60

I talked with the buyer from above company today and he gave me the following info on prices. Buyer said the last time Union Rep was in, he did not see him but a few days later he got new and lower prices. He also got new prices from Dixie Container.

Box number	Dixie Container 1,000 lot	Union Bag Base plus set up
6 S	\$ 144.05	\$ 124.45 plus 25.00
8 S	174.50	160.55
12 S	217.55	191.45
20 S		290.70
21 S	324.40	297.15
24 S	346.15	315.35
36-2	443.20	402.20
48 S		570.60
36-3		606.50

Buyer had told me he would not buy until Nov. or Dec. so I see no reason to get too excited about it, but I feel we should take some stand on it. I told him at times these boys would put prices in for a 15 or 30 day period and if he placed the order with them they would probably return it or charge the higher price. I don't understand this. If Union got all of it they would buy more than \$10,000 per year, and these prices are completely out of reason. Please note that Unions quote was dated Oct 1, 1960 and Dixie Container was dated Sept 27, 1960. The buyer gave me this by phone so it didn't do them any good to cut the price. They didn't get an order.

10/14/1960

Because of the increase in
volume we will have to raise
our prices 10/14/1960

4/4 369

DEFENDANTS' EXHIBIT 371

Document No. SRP-213B

Description of document:**Salesman's Report of Interview****Date:****January 25, 1960****Addressed to:****Brad James, Sales Service Manager, St. Regis,
Jacksonville****Written by:****J. W. Petree, Sales Representative, St. Regis,
Jacksonville****Other data:****Initials "BJ" are Brad James, Sales Service Manager,
St. Regis, Jacksonville. Note reads "handled"****Exhibit Text**

JACKSONVILLE
DIVISIONCORRUGATING DIV. ☒FLEXIBLE PACKAGING DIV. ☐

GROWERS CONTAINER CORP. RATION

CHECK HERE FOR
URGENT ACTION ☐FIRM NAME Gillis Coleman Co. JRP-213B JAN 27 1960 DATE JAN. 25, 1960ADDRESS Columbia, S. C.

712/101111-1111

PERSON INTERVIEWED Gillis ColemanTITLE OwnerTYPE OF BUSINESS ProduceREPORTED BY PetresREPORT TO Brad, JamesDEPARTMENT Sales Service

Buyer gave an order to Carolina Container due to price. Carter Holbrook flew down here and told him they had lost \$ 30,000 volume in this account last year. He also told buyer that they had analyzed one of our cartons and we were not giving him weather proof adhesive. I had no comment because in the beginning he had told me that our quality had slipped on the last two orders plus the fact he felt sorry for Carter and wanted to help him. This does not mean that we are out here but we have to really make him some good cartons to get back in the running. I sent you one of Carolina's Cartons for you to look at. It looks like Jute to me. Their price was \$ 191.25 Per M and a \$ 4.20 of this was weather proof adhesive. We have another problem here Union Bag made some 20lb cartons for him and they were real good. They had weather proof adhesive and were less than other people without weather proof starch. They gave him a price of \$ 194.00 Per M on 40lb cartons to include weather proof adhesive. Of course you realize our price is \$198.75 with the weather proof starch. Please advise.

Pete

RECORDED
DISPOSITION

DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

6/2/60 371

DEFENDANTS' EXHIBIT 378

Document No. UC-9

Description of document:

Letter

Date:

January 6, 1961

Addressed to:

Union Bag Camp Paper Co.

Written by:

J. H. Leverette, Purchasing Agent, Southern Plants,
The American Thread Company

Other data:

Handwritten Note:

Mike Murrill, Jamestown Salesman

Exhibit Text

UC-9

The American Thread Company

(INCORPORATED)
SEVIER, NORTH CAROLINA
(MAILING ADDRESS - P. O. BOX 340, MARION, N. C.)
TELEPHONE - MARION 2181

January 6, 1961

Union Bag-Camp Paper Co.
P. O. Box 1965
Spartanburg, S. C.

Gentlemen:

We have had a proposal made to us by one of the large producers of corrugated on a guaranteed price basis for one year at an overall cost of $5\frac{1}{2}\%$ below your current prices.


Due to current profit picture we will take advantage of this offer unless you are able to make the necessary price adjustments to meet this guaranteed price.

An early reply advising your intentions is requested.

Very truly yours,

J. H. Hewitt
J. H. HEWITT
Purchasing Agent
Southern Plants

JHL:mf

Witte: Have all priced for this account reduced $5\frac{1}{2}\%$. Ask Mike if he wants quote sent to him or direct to customer. Check to see if we send copy to Trenton office, Tarleton Salesman etc. When sending Mike the quote or his copy, ask him to check all of the items and not  kind which are inactive.

SPINNERS AND MANUFACTURERS OF THREADS AND YARNS MADE FROM COTTON, WOOL, NYLON AND OTHER SYNTHETIC FIBERS

Ref. E. 378

DEFENDANTS' EXHIBIT 399

U. S. v. Container Corporation et al.
Document No. UC-48

Description of document:

Memorandum

Date:

Feb. 12, 1960

Addressed to:

(K. H.) Payne, Jamestown Service Mgr.

Written by:

(R. H.) Tedder, Jamestown Salesman.

Other data:*

Mentioned in text:—Mr. Svitak, Purchasing Representative, Kerns Bakery.

Exhibit Text

*** Handwritten body of text is as follows:**

"Ken,

Please, quote attached; and may I remind you that it is strictly price, also quoting are H&D—Dixie—Richmond—and I think Cont. Can & Carolina.

Mr. Svitak has most of the quotes and he told me that they were not consistent at all. He said from the quotes one carton ran from 129.00 per M to 172.00 per M".

HIGHLAND CONTAINER COMPANY

4C-48

Office to Ken Office Date 7-6-1960
 Subject Ken's Report Attention of _____

Ken,

Please Note Attached, and may I
 Remind you That it is Strictly for
 also Quoting as H&D - Dixie - Richmond
 and I Think Cont. Can & Carolina.

MR. SUTAK has most of The Quotes and
 he Told me That They were not consistant
 at all. He said That The Quotes our Carter
 Ran from 179⁰⁰ per m To 172⁰⁰ per m.

Re figure 2200 for 4/1/60
 1500 54

1500 54
 1500 54

Thanks,
 Bob

Ref. 4 399

DEFENDANTS' EXHIBIT 400

Document No. UC-50

Description of Document:

Handwritten note (accompanies #UC-51)

Date:

Feb. 17, 1961

Addressed to:

[None.]

Written by:

Bob (Markham)—Account Mgr, Jamestown

Other data:**Mentioned in text:**

Mr. Braak—Purchasing Representative
North Carolina Cooperative Bulb
Growers Association

Exhibit Text

UC-50

2/17/61

N.C. Cooperative Bull. Service

Mr. Braak said

Head was
 exactly \$10.00 under
 us on quote 1/13/61.

Rob

Ref. Ex. 400

← 30 for 3-10

DEFENDANTS' EXHIBIT 402

Document No. UC-59 & 60

Description of Document:

Memorandum

Date:

Feb. 21, 1961

Addressed to:

F. E. Kneip, General Sales Manager, New York

CC:

L. A. Wulff, Asst. General Sales Mgr, New York

J. I. Pritchett, Regional Sales Mgr, Savannah

Written by:

F. B. Grimes, Spartanburg, Sales Mgr.

Other data:

[None.]

Exhibit Text

UC-59

Mr. F. E. Kneip

New York

Price Changes During December
1960 and January 1961

F. B. Crimms

Spartanburg

February 21, 1961

cc: Mr. L. A. Wulff, New York
Mr. J. I. Pritchett, Savannah

We failed to send you subject report for December and January and we are, therefore, combining the two months on this one report.


January - 1961

<u>Customer</u>	<u>Address</u>	<u>Explanation</u>
Rigolow-Sanford Carpet Co., New York, NY (For all mills in Spartanburg's territory.)		From \$12.35 + \$25.00 to \$12.35 + \$25.00 less 5%. Not offer made by unnamed competition.
Dover Mill Co.	Shelby, N. C.	Prices reduced 3%. As yet we have been unable to determine who cut this level gain.
Cleveland Table Co.	Selma, Ala.	From \$12.35 + \$25.00 less 3% to \$12.35 + \$15.00 less 10%. St. Joe Paper Company, reduced prices in this account the latter part of 1960. We reduced to regain our position.
Beaunit Mills	Fountain Inn, S.C.	Prices on certain items reduced 1% to meet prices of Owens-Illinois, Salisbury, N.C.
Belton Co.	Belton, S. C.	Reduction of 1% given to meet offer of Gaylord Container Co., Greenville, S. C.
Hicks Produce Co.	Johnson City, Tenn.	Price on this account's volume item reduced 10% to meet offer of Mengel Co., Knoxville, Tenn.
Neely Produce Co.	Knoxville, Tenn.	5% price reduction given to meet offer by Tri-State Container, Elizabethton, Tenn.
Riegel Textile Corp.	Johnston, S.C.	Prices reduced 7% to meet price cuts by Dixie Container, Richmond, Va., and Gaylord Container, Greenville, S. C.

4/4 412-1

DEFENDANTS' EXHIBIT 402

Continued

Continued Exhibit Text 

413 UC-60

(413)

F. E. K.
2/21/61
#2

December - 1960

American Throdd Co.

Marion, N. C.

Prices reduced 5-1/2% to retain business. Customer claimed they had this offer from another source.

Sealtent Foods

Charlotte, N. C.

St. Joe Paper Co., St. Joe, Fla., cut the level from \$13.75 to \$13.00.

Welico Shoe Co.

Waynesville, N.C.

From \$13.00 + \$15.00 to \$13.00 + \$15.00 less 5%. Became competitive in this account.

JMG/mve

Frank D. Grimes

DEFENDANTS' EXHIBIT 406

Document No. UC-70

Description of Document:

Letter

Date:

March 1, 1961

Addressed to:

Budyed Yarns, Inc.

Written by:

J. H. Goodman, Spartanburg Service Mgr.

Other data:**Notes:**

Frank B. Grimes, Spartanburg Sales Mgr.

Pat (H. C.) Fodrie—Salesman, Spartanburg

Mr. John Harvey, Purchasing Representative

Budyed Yarns Inc.

Exhibit Text 137

THIS WAS LEFT OUT OF LAST WEEK'S

UC-70

MAIL -

Post

March 1, 1961

Budyed Yarns, Inc.
York, South Carolina

F. O. O. Spartanburg- Freight
Allowed to York, S. C.

These prices effective March 1, 1961,
and subject to revision April 15, 1961,
and monthly thereafter.

1000 80-C SRSC 30 24 28 2751A STO 3PIC 7315 \$774.75
3" o'lap T & B 69-69

3/30/61

FRANK B. GRIMES:

MEAD-ATLANTA HAS REALLY "BUSTED" THE ABOVE COMPANY.
MR. JOHN HARVEY SHOWED ME A COPY OF MEAD'S
ORDER # 04423, DATED 3/6/61 FOR 1 m

80-C CTNS 30 X 24 X 28 2751A TEST PRICE \$741.07/m
(CALLING FOR DFL 3/20/61)

THEY ALSO CHANGED PRINTING FROM 3PIC TO 3T2C
AND PURCHASED THE DIES WHICH CAME TO AROUND \$163.00

THIS PARTICULAR ACCOUNT IS NOT WORTH A GREAT DEAL
ANNUALLY, BUT THIS INFO MAY BE HELPFUL ELSEWHERE

kk

APR 12 1961

J. H. Goodman, Service Manager
Ref. E. 406
Post to file

DEFENDANTS' EXHIBIT 417

Document No. UC-86

Description of Document:

Memorandum

Date:

March 22, 1961

Addressed to:

H. C. Fodrie, Spartanburg Salesman

CC:

J. H. Goodman, Spartanburg Service Mgr.

F. B. Grimes, Spartanburg Sales Mgr.

Written by:

W. R. Koopman, Sales Correspondent, Spartanburg

Other data:

Mentioned in Note;

F. B. G.—F. B. Grimes (above)

Pat—H. C. Fodrie (above)

Exhibit Text 13

FORM 2-595

UNION BAG-CAMP PAPER CORPORATION

UC-86

TO Mr. H. C. Fedrie AT Charlotte SUBJECT Springer Cotton Mills
 FROM W. R. Koopman AT Spartanburg DATE March 22, 1961 (dic. 3/21/61)

cc: Mr. J. H. Goodman
 Mr. F. B. Grimes

We are submitting a quotation with discounts varying from 23% to 32%. The 23% item is on a tear tape carton; 30% is deducted on the 10 FCC, and the balance of the quotation is submitted on a 32% discount.

We are very anxious to know how we stand with this account, and once again I am going to ask you to follow up with Warren Munday and ask how we stand. If we do not get orders with a minimum 32% it would venture to say that we will remain at our previous level.

Pat, let me have this information as soon as you can. The quotation is due by March 24 with delivery on the majority of the items April 5.

WRK
WRK:k

3/28/61

F.B.G.

THREE (3) COMPANIES HAD PRICES LOWER THAN
 OURS ON SUBJECT QUOTE (DATED 3/22/61).

LOT OF "HUNGRIER" FOLKS, IT WOULD SEEM.

Thank you.

Pat

417
 MAR 30 1961

DEFENDANTS' EXHIBIT 418

Document No. UC 87 & 88 (2 pages)

Description of Document:**Memorandum****Date:****March 22, 1961****Addressed to:****J. I. Pritchett, Regional Sales Mgr.****Written by:****J. E. Faulkner, Jr., Jamestown Sales Mgr.****Other data:****Mentioned in text:****Ed Greene, Jamestown Salesman****John Hendricks, Purchasing Representative,****R. J. Reynolds Tobacco Company****Exhibit Text**

W 650
 UC-87
 UNION BAG-CAMP PAPER CORPORATION
 JAMESTOWN

4/16/61
 ES CHRENDING

TO Mr. J. I. Pritchett AT Savannah Box SUBJECT R. J. Reynolds Tobacco Company
 FROM J. E. Faulkner, Jr. AT Jamestown DATE March 22, 1961

As you know, we furnished the Camel 12M carton to this account for a number of years. On a quarterly basis, Reynolds requests quotations on the Camel, Prince Albert, Winston, and Salem cartons. In December, 1960, we quoted the following prices for the first quarter of 1961:

Camel	-	\$131.65
Prince Albert	-	\$ 89.25
Winston	-	\$154.60
Salem	-	\$154.60

On the basis of this quotation, we received an order for 134,400 Camel's for delivery the first quarter.

Last week, Reynolds requested prices on these same boxes for delivery during the second quarter. On Thursday of last week, Ed Greene called on John Hendricks in an effort to determine what the situation was in regards to quotations which he might have received. Mr. Hendricks told Ed he had received prices which were "all over the lot". He told Ed that Union Bag would have to better their first quarter price if we hoped to secure any business for the second quarter.

With this customer guidance, and the knowledge that the market price on corrugating medium had dropped from \$1.72 last fall to \$1.38 March 15, I called on Mr. Hendricks last Friday and submitted the following prices:

Camel	-	\$127.70
Prince Albert	-	\$ 86.60
Winston	-	\$149.95
Salem	-	\$149.95

These prices reflect a decrease of 3% below the prices which we quoted for the first quarter. Actually, the prices do not reflect a full decrease in the price of corrugating medium from a \$1.72 to \$1.38, but they do reflect an approximation of the decrease in the price of the corrugating medium from \$1.55 to \$1.38. Instead of figuring it out to the exact penny, I made a round percentage reduction of 3%, in the hopes that we might build position in the account.


This morning, John Hendricks called me on the telephone and said that he had received prices yesterday which made our quotation completely out of line. He indicated that we would not receive any business from Reynolds unless we wanted to revise our March 17 prices. Upon further questioning, he indicated that some of his suppliers had reduced their price by a minimum of the difference in the price of corrugating medium from \$1.72 to \$1.38. He said that he had already placed a good portion of his second quarter's requirements but would hold a part for me if I cared to requote. I told him that I would be glad to go over our quotation and see if I could make further adjustments and call him.

After talking to Mr. Hendricks, I got our estimate cards and decided to re-figure our prices on the basis of reducing our first quarter prices by the full amount of corrugating medium reduction from \$1.72 to \$1.38. This gave me a board multiplier reduction of 53 cents per thousand square feet. As a result of this calculation, I called Mr. Hendricks and submitted the following revised prices:

VS
 4/18-1

DEFENDANTS' EXHIBIT 418

Continued

Continued Exhibit Text 

W 651
UNION BAG-CAMP PAPER CORPORATION
JAMESTOWN

Page 2

TO Mr. J. I. Pritchett AT Savannah Box SUBJECT R. J. Reynolds Tobacco Company
FROM J. E. Faulkner, Jr. AT Jamestown DATE March 22, 1961

Camel	-	\$124.90
Prince Albert	-	\$ 84.70
Winston	-	\$147.10
Salem	-	\$147.10

Mr. Hendricks told me that I was still pretty far out of line on the Winston, Salem, and Prince Albert business, and he suggested that I forget any possibility of securing any portion of that. He also said that I was still slightly out of line on the Camel box, but a very minor adjustment would place me in a competitive position. After much discussion, justification, horse trading, negotiation, etc., I told Mr. Hendricks that I would offer him a final price of \$124.50. After much deliberation, he said that he would accept that price and forward an order for Camel business on that basis.

As you can see, this price has fallen to an extremely low point. In order to hold our position in the account, however, I feel that we were under the necessity of meeting the competitive situation as outlined by Mr. Hendricks.

Eed-

J. E. Faulkner, Jr.

JEF/19

Ref. 418

DEFENDANTS' EXHIBIT 424

Document No. UC-96

Description of Document:

Letter

Date:

March 30, 1961

Addressed to:

Union Bag-Camp Corp.

Written by:J. H. Leverette, Purchasing Agent, Southern Plants,
The American Thread Company**Other data:**

[None.]

Exhibit Text

The American Thread Company

(INCORPORATED)

SEVIER, NORTH CAROLINA

(MAILING ADDRESS - P. O. BOX 302, MARION, N. C.)

TELEPHONE MARION 2100

March 30, 1961

UC-96

Union Bag-Camp Paper Corp.
P. O. Box 1965
Spartanburg, South Carolina

Gentlemen:

In comparing your recent revised prices we find that you are high on the following cases as shown below:

CASE NO.	UNION BAG PRICE	COMPETITOR'S PRICE
37% SG-2'	\$87.55 + \$25.00	\$84.65 + \$25.00
4% ART. V-1'	211.85 + 26.50	201.15 + 26.50
6% V9-12'	73.10 + 26.50	68.55 + 26.50
3% 16/50'	146.55 + 26.50	142.45 + 26.50
1% 35/18'	261.80 + 26.50	258.05 + 26.50
1% 40/14 NC	294.40 + 31.00	290.85 + 26.50
1% 40/14'	289.25 + 26.50	284.60 + 26.50
4% 50/100'	106.15 + 26.50	101.30 + 26.50
6% 91/20'	269.70 + 26.50	251.50 + 26.50
4% 150/10'	354.65 + 26.50	330.50 + 26.50
1% 235/10'	247.60 + 26.50	243.65 + 26.50
3 500/50'	80.85 + 26.50	77.95 + 26.50
2 LSN 5'	209.55 + 25.00	203.85 + 25.00
2 B-25'	206.25 + 26.50	201.35 + 26.50
1 675/25'	93.15 + 26.50	85.55 + 26.50

Please advise if you wish to revise your prices to the above level.

Yours very truly,

J. H. LEVERETTE
J. H. LEVERETTE
Purchasing Agent
Southern Plants

JHL:mf


def. 26. 424



MAR 31 1961

DEFENDANTS' EXHIBIT 437

Document No. UC-120

Description of Document:**Memorandum****Date:****April 7, 1961****Addressed to:****Mr. (J. E.) Faulkner, Jamestown Sales Mgr.****Written by:****(E. L.) Greene, Jamestown Salesman****Other data:****Mentioned in Text:****Mr. Gunn, Purchasing Representative,
Hygrade Food Products Company****Exhibit Text** 

HIGHLAND CONTAINER COMPANY *UC-120*

Greene

Office to

Office Date

*4/7/61*Subject Hygrade Food Products Co. Attention of Kr. Faulkner

I took our quote of 4/4/61 into above account and was told by Kr. Gunn that our price was so far out of line it was pitiful. Our price on the L-C-170 was \$7117.55 per M in 5Klots. Wyerhausers price for the same item was \$ 88.80 On the D.C. 163 our price was \$ 65.05 Wyerhausers price was 54.00. All of the Richmond Companies have met these prices that have been brought in by Wyerhauser and Wyerhauser has very little for their efforts. I dont think a price here is any good with out a long term contract which they will not give. When you come up here I still want you to go by with me.

*Quote**13⁰⁰**+1500**less 1570**finished*

Thanks

*Ed**Ref L 457*

DEFENDANTS' EXHIBIT 447

Document No. UC-140

Description of Document:

Memorandum

Date:

April 21, 1961

Addressed to:

R. C. Day, Savannah Asst. Sales Mgr.

CC: J. W. Butler, Savannah Sales Mgr.

T. J. Fahey, Account Mgr., Jamestown


W. H. Bibbey, Sales Correspondent, Savannah

Written by:

H. C. Brown, Jr., Savannah Salesman

Other data:

[None.]

Exhibit Text 

W 267L UC-140
 UNION BAG-CAMP PAPER CORPORATION

TO R. C. Day AT Savannah SUBJECT Cherokee Manufacturing Co.
 FROM H. C. Brown, Jr. AT Atlanta DATE April 21, 1961

cc: J. W. Butler - Savannah
 T. J. Fahey - Atlanta
 W. H. Bibbey - Savannah

The subject company, located in Winder, Georgia, represents approximately \$2,354.54 per year in corrugated boxes. We have been receiving 100%. Our recent quotation of April 4, 1961, was \$503.65 per M on their 6'X box. Owens-Illinois submitted a price of \$443.70 and got an order for 1M plain boxes. Our quotation was on a printed box. This represents a 10% reduction.

We can submit a competitive price if we desire.

WFB-

PL send new quote
 to KCB on this item.
 New level will be
 13¢ + 25¢ less 10%

Bob -
 quote sent 4/28/61
 WFB

Ref. 447

DEFENDANTS' EXHIBIT 450

Document No. UC-144

Description of Document:

Memorandum

Date:

April 22, 1961

Addressed to:

J. E. Faulkner, Jamestown Sales Mgr.

Written by:

Harvey J. Sutlive, Jamestown Salesman

Other data:

Mentioned in Note:

Ken—K. H. Payne, Jamestown Service Mgr.

Exhibit Text 13

Avoid Verbal OrdersHIGHLAND CONTAINER COMPANY *HC-144*

JAMESTOWN, NORTH CAROLINA

Subject Mt Hope Mills

Our Order No. _____

Attention Mr. J. E. FaulknerFrom Harvey J. SuttivaDate 4-22-61

Mr Sara Parrott of Mt Hope informed me this past week that 5 box
makers have cut our last quotation by 6%. She also said if we
expected to become a supplier we would have to do like wise.

Harvey

Ken -

*Reduce our last price
by 10% - Give quote to
Harvey to take in -*

BT

*Mail 4-26 - to Harvey
Lue*



4/28/61

DEFENDANTS' EXHIBIT 459

Document No. UC-160

Description of document:

Note (Attached to UC-161, a memo)

Date:

[None.]

Addressed to:

Jim—J. H. Goodman, Spartanburg Service Mgr.

Written by:

W. R. Koopman, Sales Correspondent, Spartanburg

Other data:***Mentioned in Text:**Horace Doan, Purchasing Representative,
Spinners Processing Co.**Exhibit Text**

*** Handwritten body of text is as follows:**

"Jim—Horace Doan claims he has a price of \$875.00 approx. on this item from someone & they cut it 10% for the remainder of the year. Received 50% of business. Suggest we go to \$800.00. Gair has been shipping here. Owens, H&D, Gaylord, active."

111-160

Jim - Horace Doan
 claims he has a
 price of \$75.00 approx.
 on this item from
 someone & they cut
 it 10% for the
 remainder of the year.
 Received 50% of business,
 Suggest we go to \$80.00
 Springfield Hair has been
 shipping here. Owens,
 H & D, Hayford, active.

4/24/59

DEFENDANTS' EXHIBIT 462

Document No. UC-163

Description of document:

Memorandum

Date:

May 7, 1961

Addressed to:

R. C. Day—Asst Sales Mgr, Savannah


Written by:

M. D. Ellis, Salesman, Savannah

Other data:

Mentioned in Text

Bill—Bill Crain, Purchasing Agent, Lawtex Corp.

Exhibit Text 

Form 3-29 Rev.

W 2478.

UC-143

UNION BAG-CAMP PAPER CORPORATION
SAVANNAH

TO R. C. Day AT Savannah SUBJECT Sawtex Corp.
 FROM M. D. Ellis AT Dalton DATE May 7, 61

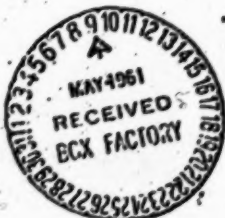
Bob, as I advised you, Bill stated that he has had a reduction of prices that figured roughly 52 down the line.

This reduction come from a present supplier who hoped to increase their portion of business.

The price for the 1005 is \$921.21 and was \$969.70, the 755 is \$761.19 and was \$801.25.

Bill stated that if we just meet these prices he could not give us the next order on these items which will be Monday May 8th but if we did better then we should get them.

Alan



DEFENDANTS' EXHIBIT 466

Document No. UC-167

Description of document:

Memorandum

Date:

May 9, 1961


Addressed to:

J. H. Goodman, Service Mgr, Spartanburg
CC: F. B. Grimes, Sales Mgr, Spartanburg
D. R. Bloxham, Sales Correspondent,
Spartanburg

Written by:

E. Edmonds, Salesman, Spartanburg

Other data:

[None.]**Exhibit Text** 

UC-167

Mr. J. H. Goodman

Spartanburg

Hale Brothers Produce Co.

E. Edwards

Knoxville

May 9, 1961

CC: Mr. F. D. Criss

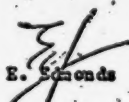
Mr. D. R. Bloxham

Jim, as requested, following is a breakdown of competitors prices quoted to the subject April 17, 1961.

Box Makers	20's	40's
1. Gaylord	\$132.20	\$115.15
2. Inland	144.20	114.60
3. Mead	140.00	120.00
4. Mengel	130.75	110.70
5. Owens Illinois	141.60	121.10
6. Star Box	128.60	123.45
7. Tri-State	135.45	113.05
8. Union Bag	127.60	105.00

Continental Can was requested to quote. However, no prices were received.

Another requirement for these boxes should be coming up in late summer or early fall. Hope this information will be helpful in future pricing decisions.



E. Edwards

EE:ce

df E. 466
MAY 12 1961

DEFENDANTS' EXHIBIT 471

Document No. UC-176

Description of document:

Memorandum

Date:

May 15, 1961

Addressed to:

R. C. Day, Asst. Sales Mgr., Savannah

Written by:

M. D. Ellis, Salesman, Savannah

Other data:

Mentioned in Text:

Mr. Elsberry, Purchasing Representative
Dell-Rube Chenilles

Form 3-29 Rev.

W 2424

UNION BAG-CAMP PAPER CORPORATION
SAVANNAH

UC-176

TO R.C. Day AT Savannah SUBJECT Dell-Rube Chemille
FROM M.W. Ellis AT Dalton DATE May 15, 61

But, as I advised you I saw a Star Box quoted dated 5/1/61 on which the price of the #100 mat Box was \$868.65 in 69-69 and the #75 mat was \$751.60 in 69-69.

Mr. Elsberry advised that Mergle then cut these prices in with the price of the #100^{mat} being \$820.00. Star Box then lowered their price again so that the #100^{mat} price is approx \$808.00/m in 69-69.

Mr. Elsberry would like us to request all items and quote the #100 mat + 75 mat in both 69-69 and 69-36-47 for comparison.

Since we were given price info to Mr. Elsberry would be hesitant at going along with us if we just meet these prices. I will need our quote by May 22nd.

Don

DEFENDANTS' EXHIBIT 472

Document No. UC-182

Description of document:

Memorandum

Date:

May 19, 1961

Addressed to:


R. (Robert) Clowers, Spartanburg Salesman

Written by:

J. H. Goodman, Service Manager, Spartanburg

Other data:

Note: Bob C.—R. Clowers (above)

Exhibit Text 

FORM 8-575

UNION BAG-CAMP PAPER CORPORATION

UC-182

TO Mr. R. Clowers AT Spartanburg SUBJECT Excelsior Underwear, Inc.
 FROM J. H. Goodman AT Spartanburg DATE May 19, 1961 (dic. 5/18/61)

Please refer to my memo of May 11th and advise if you have been able to verify the \$549.45/M price which we met on the subject customer's box No. 48-S. Also advise who quoted this price.

TO *J.H.G.*
 JHG/mvo 5-26-61 *J. H. Goodman*

Was UNABLE TO GET THIS INFO ON A RECENT VISIT. BUT WILL GET IT FOR YOU EVENTUALLY. THIS CUSTOMER HAD PRICES ALL OVER THE PLACE LOWER THAN OURS ON THE ORIGINAL QUOTATION. IN RECENT WEEKS, I HAVE SEEN QUOTATIONS FROM MERRI, OWENS-ILL & DIXIE ON THE GOVERNMENT EDITION ON THE LBS WHICH WERE ~~THE~~ LOWER THAN OURS. ORIGINAL QUOTATIONS

OTHER COMPANIES, WEYERHAEUSER & POSSIBLY CAROLINA CONTAINER ARE ~~SELLING~~ ^{CUTTING} PRICES IN THIS ACCOUNT.

Bob C *472*

DEFENDANTS' EXHIBIT 484

Document No. UC-210

Description of document:
Inter-Office Communication

Date:
[None.]

Addressed to:
J. E. Faulkner—Sales Manager, Jamestown

Written by:
E. L. Greene—Salesman, Jamestown

Other data:
Handwritten Note:
Jean—Jamestown typist
B—Bob Burnett, Sales Correspondent, Jamestown

Exhibit Text

INTER-OFFICE COMMUNICATION

From: *E. J. [unclear]* UC-210
 UNION BAG-CAMP PAPER CORPORATION

SUBJECT

DATE

Reply Message

To: [unclear]
J. E. Jawlkmr
 Jail mty Co. Inc.
 This is based on Con Can - for items.
 We are selling Joe + M + B Heaaway. I
 asked Joe if I could make a copy of their
 guide & he said let him get his name
 off and I could just have the original.
 I hope you can meet them.

TURN TO:

REPLY:

SIGNATURE

DATE

REPLIER'S COPY - RETAIN FOR YOUR FILES

SIGNATURE

SIGNATURE

ORIGINATOR—DETACH AND RETAIN

DEFENDANTS' EXHIBIT 485

Document No. UC-211

Description of document:

Quotation—Continental Can Co.

Date:

June 12, 1961

Addressed to:

[None.]

Written by:

James C. Wall, Jr., Sales Service Manager Continental Can Company, Robert Gair Division, Richmond, Virginia

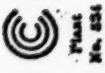
Other data:

Salesman:—Stanbury

Exhibit Text

CAN COMPANY, INC.

JOHNIT GARR DIVISION
 AND SHIPPING CONTAINER PLANT
 Post Office Box 215
 RICHMOND, VIRGINIA
 Telephone: MI 3-8415 or LD-167



TERMS: 1% 10-NET 30 Days
 AND DISCOUNT ALLOWED ON PREPAYMENT

SALESMAN SCANSBURY

BOX NO.	STYLE	LENGTH	SIZE WIDTH	DEPTH	STOCK	PLATE	TEST	JOINT	PRINTING	PRICE PER M IN QUANTITIES OF	QTY
0100	RSC	14 7/8	10 5/8	7	92.6	8	125	Taped	1 color	10000	71
0200	RSC	15 1/2	11 3/4	7	93.90	"	"	"	"	10000	78
100-12	RSC	23 3/4	21 3/4	30 3/4	457.10	"	175	"	"	1000	391
200-12	RSC	24	23	31 1/4	"	"	"	"	"	1000	426
		24	W -	L -	475.90	"	"	"	"	"	19
		31 1/2	23	24	"	"	"	"	"	"	"

F.C.B. - Richmond, Virginia - one week delivery
 First two lots to be shipped in 2500 lots each
 and last two items to be shipped in 500 lots each.

Q. L. 485

James C. Hall, Jr.
 Sales Service Manager
 June 12, 1961

UC-211

QUOTATION

DEFENDANTS' EXHIBIT 486

Document No. UC-215

Description of document:

Memorandum

Date: —

June 13, 1961

Addressed to:

F. E. Kneip—Gen. Sales Mgr., N. Y.


Written by:

J. E. Faulkner, Jr.—Jamestown Plant Sales Mgr.

Other data:

Mentioned in Text:

Fred—Kneip, above

J. L. Camp, Jr.—Member Union-Camp Executive
CommitteeMr. Gwaltney—Purchasing Representative Gwaltney,
Inc.Exhibit Text 

UC-215

Mr. F. E. Kneip

New York

Gwaltney, Inc.

J. E. Faulkner, Jr.

Janestown

June 13, 1961

Reference is made to your June 1st letter to Mr. J. L. Camp, Jr. regarding our situation with the above.

Fred, this is certainly becoming one of the most difficult situations to deal with. Ever since our prices were cut in this account a little over a year ago, we have been constantly revising. The pattern is usually the same. Mr. Gwaltney tells us that he has lower prices, consequently we revise in an attempt to become competitive. When we take in this quotation, Mr. Gwaltney says that he believes that we are finally competitive and he thinks he can send us some orders. When we press him further, he always says that he has no business to place at the moment, but he will be ready to order in two or three weeks. By the time we follow up, he advises that our prices are once again out of line.

This week, I am figuring a new quotation which will be submitted to the customer within the next week or ten days. The prices have now reached a very low point, and I do not feel we should revise anymore after this present quotation is submitted.

As the situation develops, I will keep you posted.

JEF/lp

J. E. Faulkner, Jr.

JEF 426

DEFENDANTS' EXHIBIT 492

Document No. UC-221

Description of document:

Memorandum

Date:

June 13, 1961

Addressed to:


J. E. Faulkner, Jr.—Sales Mgr., Jamestown

Written by:

D. F. Sinclair—Salesman, Jamestown

Other data:

Mentioned in Text:

Mr. Hege, Purchasing Representative, Siceloff Mfg.
Co.Exhibit Text 

Form E-578

UC-221

UNION BAG-CAMP PAPER CORPORATION
JAMESTOWN

TO J. E. Faulkner, Jr. AT Jamestown SUBJECT Sicoloff Mfg. Co.
FROM D. F. Sinclair AT Hickory DATE June 13th, 1961

Mr. Hoge related a softening of the cartin market yesterday. Two box manufacturers have listed lower prices--Miller and Richmond.

		Miller	Richmond	UB
#MD	500	826.60	978.00 (90/90)	899.60
#MO	500	610.85	614.60	637.65
#6P	500	451.75	459.00	471.20
#BO	500	448.55	459.80	467.75
#LPP	500	230.05	228.95	239.20
#SMPP	250	233.30	249.05	240.10
#SJPP	250	321.10	342.95	332.80

They will not be in the market before July vacation but would like to put prices in before that.... Please mail prices to me.

Thanks.

Don.

*Refigure on
1235 Less 5% M+M
2500 S. 21.
on M+M quote spec.
price of 82500
in 500 lb*

*Send quotes on
Lexington
+
Stoke Florida
to Don Sinclair*

*✓
dy/ E. 22*

DEFENDANTS' EXHIBIT 502

Document No. UC-247

Description of Document:

Memorandum

Date:

June 20, 1961

Addressed to:

R. C. Day—Asst. Sales Mgr, Savannah

CC:

• J. W. Butler—Sales Mgr, Savannah


A. W. Dowell—Sales Service Mgr., Savannah

Written by:

A. Smith—(Al) Smith, Salesman, Savannah

Other data:

Mentioned in Text:

Mr. Germano—Purchasing Representative,
Pierce Shoe Co., Waycross, Ga.**Exhibit Text** 

Form 3-29 Rev.

W 3026

UC-247

UNION BAG-CAMP PAPER CORPORATION
SAVANNAH

TO Mr. R. C. Day AT Savannah SUBJECT Pierce Shoe Co., Waycross, Ga.
FROM A. Smith AT Savannah DATE June 20, 1961

cc: Mr. J. W. Butler
Mr. A. W. Dowell

Mr. Germano broke the news to me that competition has slashed prices in the account 20%.

Do you want to take any action on this?

The buyer would like a quote from us. The current active sizes are:

36-24 } all S/B 3PIC
36-3
36-5
24-10

Just 13% + 2% = - 20%
Give quote to Smith.

A. Smith

1/20

W 3026

DEFENDANTS' EXHIBIT 510

Document No. UC-259

Description of Document:
Memorandum**Date:**
6/29/61**Addressed to:**
Mr. Faulkner—J. E. Faulkner, Sales Mgr, Jamestown**Written by:**
B. G. Kerr, Salesman, Jamestown**Other data:***
Mentioned in Text:
Mr. Stout, Purchasing Representative
Boling Chair Co. & Stout Chair Co.
Handwritten Note:
Ken—K. H. Payne, Service Mgr, Jamestown
JEF—J. E. Faulkner (above)**Exhibit Text**

*** Text of handwritten notations are as follows:**

"Ken: Price all Boling Chair & Stout Chair items on 15.00 25.00 S.U. less 5% M/M. Effective immediately—Change any active orders on file—"

"O.K. Orders changed 6-30-66."

HIGHLAND CONTAINER COMPANY UC-259

Office to _____ Office Date 6/29/61
 Subject Boling Chair Co. Attention of Mr. Faulkner
Siler City, N. C.
and
Stout Chair Co.
Liberty, N. C.

Mr. Stout told me today that he already had a 2% reduction in his prices for 3 months and had been told that additional decrease was forthcoming.

I suggested to him that we reduce our prices to him by 5%, effective with shipments made on and after July 10. He agreed to this with understanding that we keep him advised of conditions that may create further changes.

BOKert


OK
 Order changed
 6-30-61

Re: Price all Boling Chair
 & Stout Chair items on 1500 2500 S.H.
 Less 5% MIM. Effective
 immediately.
 Change any active orders
 on file -
 jf

Ref. 510

DEFENDANTS' EXHIBIT 522

Document No. UC-290

Description of Document:**Memorandum****Date:****July 17, 1961****Addressed to:****J. I. Pritchett, Regional Sales Mgr, Savannah****CC:****R. C. Day, Asst. Sales Mgr, Savannah****F. E. Kneip—General Sales Mgr, N. Y.****L. A. Wulff—Asst. Gen. Sales Mgr, N. Y.****Written by:****J. W. Butler, Sales Mgr, Savannah****Other data:****[None.]****Exhibit Text** 

Form 3-29 Rev.

W 664

UC-290

**UNION BAG-CAMP PAPER CORPORATION
SAVANNAH**

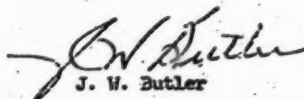
TO Mr. J. I. Pritchett AT Savannah SUBJECT U. S. Rubber Co., Marietta, Ga.
 FROM J. W. Butler AT Savannah DATE Jul-17, 1961

cc: Mr. R. C. Day
 Mr. F. E. Kneip, N.Y.
 Mr. L. A. Guliff, N.Y.

So as to keep everyone informed and our records up to date, I have the following information to report concerning price activity here in the southeast.

Subject concern's 3rd quarter requirements were awarded to Continental Can Co., Atlanta, Ga. Subject concern has 13 different items and the #10 carton is the most attractive as far as quantity and desirability from a manufacturing standpoint.

We have been supplying subject concern with their #10 cartons since 1955. On the last go-round we quoted a verbal price of \$23.50 per thousand and then requested a price of \$771.10 per thousand, which is 25% off the \$13.00 manual. Continental Can Co. took the #10 cartons for \$665.00 per thousand which is approximately 35% off the \$13.00 manual. This will return them approximately \$137.00 per ton. We were offered this business at \$665.00 per thousand, which we refused.


 J. W. Butler

JWB:ds

DEFENDANTS' EXHIBIT 527

Document No. UC-298

Description of Document:**Memorandum****Date:****July 19, 1961****Addressed to:****R. C. Day—Asst. Sales Mgr, Savannah****Written by:****T. Swails—Savannah Salesman****Other data:*****TES—T. E. Swails (above)****Exhibit Text***** Handwritten text of body of Exhibit is as follows:**

"Mr. Guthunz of subject said our prices were 10% higher than I.P. We will get some business with a competitive price—

Please advise."

"Requote at 13.00 & 25.00 less 15% Send quote to TES"

Form 3-29 Rev.

W 3022

UC-298

UNION BAG-CAMP PAPER CORPORATION
SAVANNAH

TO R. C. Day AT Sav. SUBJECT North Marine Box Co.
 FROM T. Swails AT col DATE 7/19/61

Mr. Hartung of subject said our
 prices were 10% higher than S.P.
 we will get some business with
 a competitive price -

Please advise

Requote at $13\% + 25\% \text{ less } 15\%$
 Send quote to TCS



10/1-EL 527

DEFENDANTS' EXHIBIT 529

U. S. v. Container Corporation et al.
Document No. UC-303

Description of document:

Memorandum

Date:

July 20, 1961

Addressed to:


J. E. Faulkner, Jr.—Jamestown Sales Mgr.

Written by:

T. J. Fahey—Asst. Sales Mgr., Jamestown.

Other data:

[None.]

Exhibit Text 

FORM 6-372

UNION BAG-CAMP PAPER CORPORATION JAMESTOWN

TO: Mr. J. E. Faulkner, Jr. AT: _____ SUBJECT: Celanese

FROM: T. J. Fahey AT: _____ DATE: July 20, 1961

Mr. Misfeldt received quotes from nine different companies. No one company was consistently low. Our prices were in the middle bracket. Listed are our prices on the following items as compared with the low price quoted.

Item	U.B.C.P.	Low Quote
F-87-1	\$ 427.20	\$ 399.50
F-47	83.00	73.50
T-139	1146.25	940.25
F-266	1315.20	1043.35

Mr. Misfeldt believes that only 4 or 5 out of the nine companies quoting will be in a position to warehouse. He also believes that if a company will warehouse their prices will be adjusted upwards accordingly. Therefore, I believe that our present prices may eventually hold up.

Also Mr. Misfeldt requests that we write him a letter qualifying what we will run, and the number of truck loads we will hold in storage for him. This information will then be collected and presented to Mr. Kramer for final decision. The decision on suppliers will be determined after this meeting.

TJF/lp

Tom
T. J. Fahey

def. 2-50

DEFENDANTS' EXHIBIT 555

Document No. UC-365

Description of Document:**Memorandum****Date:****August 30, 1961****Addressed to:****J. T. Hough—Spartanburg Salesman****Written by:****F. B. Grimes—Spartanburg Sales Mgr.****Other data:*****cc: J. H. Goodman—Spartanburg Service Mgr.****Exhibit Text**

* Text of handwritten notation is as follows:

"Dave—

P.S. He laughed since he told me previously he would probably find a fish to sandbag."

FORM 2-572

UC-365

UNION BAG-CAMP PAPER CORPORATION

TO Mr. J. T. Hough AT Greenville SUBJECT Carlisle Finishing Co.
 FROM F. B. Grimes AT Spartanburg DATE August 30, 1961 (dic. 8/29/61)

cc: Mr. J. H. Goodman

Jim, will you call Bill Davis at Carlisle; and tell him we are reverting to our old prices for the remainder of the year.

F B Grimes
 Frank B. Grimes

FBG/mwo

Done —

P.S. He laughed since he told me previously he would probably find a fish to sandbag.
 w/ E. 555

DEFENDANTS' EXHIBIT 559

Document No. UC-374

Description of Document:

Letter

Date:

Sept. 6, 1961

Addressed to:

Al Smith—Savannah Salesman

Written by:

Helen Rosengart, Treasurer Cari Classics Company

Other data:

[None.]

Exhibit Text 13

Cari Classics Company

W 2378

UC-374

CHILDREN'S BETTER DRESSES

OFFICE & FACTORY: PORTAL, GEORGIA
SHOWROOM: 1330 BROADWAY, NEW YORK, N. Y.

Sept. 6, 1961

Union Bag-Camp Paper Corp.
Savannah, Georgia

Attn: Mr. Al Smith,
Corrugated Container Division

Dear Al:

We just received a quote from Container Corp. of America, dated August 29th, giving us the following prices:

Our box, 25 x 16 x 9, \$253.10 per 1,000

Our box, 36 x 20 x 11, \$409.30 per 1,000

We are paying you for the above boxes, \$260.30 and \$447.90, respectively. This does not include the new 10% increase which you advised would be forthcoming.

I have checked with Container Corp. of America and they advise that the above prices will include the increase.

I have not placed an order with them, but will do so within the week, if we cannot establish some better prices on the above.

Please let me hear from you either way.

Our Price:

	25	36
25 x 16 x 9	260.30	233.80
36 x 20 x 11	474.40	447.90

Sincerely,

CARI CLASSICS COMPANY

AS CHECKED & ORDERED BY CCA
QUOTED ON SAME SIZES

HR/ram



Eileen Rosengart
Treasurer

W. L. 559

DEFENDANTS' EXHIBIT 581

Document No. UC-414

Description of Document:**Memorandum****Date:**

Oct. 2, 1961

Addressed to:

J. E. Faulkner, Jr.—Jamestown Sales Mgr.

Written by:

Don Sinclair—Jamestown Salesman

Other data:*

Audrey Williamson (mentioned in text) purchasing representative, Cottonsmith Furn. Co.

Exhibit Text

* Text of handwritten notation is as follows:

"In most cases I show only lowest bid"

UC-414 HIGHLAND CONTAINER COMPANY

JAMESTOWN, NORTH CAROLINA

TO J. E. Faulkner, Jr. AT Jamestown SUBJECT Cottonsmith Turn. Co.
 FROM Don Sinclair AT Hickory DATE 10-2-61

Confirming our conversation of this date, I called on Mrs. Audrey Williamson this morning and inquired as to our status in recent carton bids.


As you know some of the ~~XXXXXXXXXX~~ cartons have interior packing which is quoted separately... In order to arrive at the cost of a total unit Mrs. Williamson adds the unit price of each item making up a complete unit with the set-ups of these units and comes to a total price in 1/2 lots. I have added ours up so the comparison will be relative.

Carton #	Our price	Competitor	Price
37-47KD	354.35	Wende	331.00
400-r/400 Parts.	699.80	Tri State	661.70
400-w/430 Parts	702.50	Tri State	664.05
#480	976.85	O-I	910.10
#525	302.10	O-I	282.00
#935	530.60	O-I	501.40
#940	750.70	Tri-State	711.00
		Wende	717.00
		H&D	718.00

O-I erred in quoting green liner on this one and is re quoting.

I did not see the actual quotes, but these figures I obtained from a worksheet which she uses to compare all prices..

All of this business has been placed at this time except for the #940 and she is waiting for O-I to quote before she places this one size.. They will again be in the market about Feb. or March at which time they should be well situated in their new plant at Salisbury, N. C. /.. At that time new requests for quotes may be forthcoming.

*In most cases
I show my lowest bid* FOR the record,
Don 

10/2/61

DEFENDANTS' EXHIBIT 587

Document No. UC-434

Description of Document:**Quotation Report****Date:**

[None.]

Addressed to:

[None.]

Written by:

Doug (D. H.) Hall—Jamestown Salesman

Other data:

[None.]

Exhibit Text

The Dow Chemical Company

10-12

465

UC-434

October 2, 1961

Internal Paper

2,245.55

1,980.00

our price
their priceMr. D. O. Edkins, P/H,
told me.

15-104560

DEFENDANTS' EXHIBIT 588

Document No. UC-435-436

Description of Document:

Letter

Date:

Oct. 12, 1961

Addressed to:Caldwell Ragan, Jr.—purchasing representative,
Trenton Cotton Mills, Incorporated**Written by:**

N. M. Harrison—Jamestown Sales Correspondent

Other data:cc: R. L. Hubbard—Jamestown Salesman
"Ed"—J. E. Faulkner—Jamestown Sales Mgr.
R L H —R. L. Hubbard (above)**Exhibit Text***** Text of handwritten notation is as follows:**

"Ed—This is the account where they get 15 quotations. An *original Low Bidder* does not have a chance. —All are given a chance to call 3 or 4 times until the price is cut down to where the others who bid just give up.

"Weyerhaeuser was unloading 2 T/L there today"

October 12, 1961

Tronton Cotton Mills, Incorporated
Statesville,
North Carolina

Attention: Mr. Caldwell Ragan, Jr.

Gentlemen:

As requested in your letter of October 6, we are pleased to enclose a quotation sheet listing our current prices for 2500 corrugated containers, size 41 X 20 3/4 X 27 3/4. The price shown is figured for delivery to your plant.

Please advise if we may be of any service at any time.

Most cordially yours,

UNION BAG - CAMP PAPER CORPORATION

N. M. Harrison, Jr.
Container Sales
Jamestown Plant


13th St
Enclosure

cc: Mr. R. L. Hubbard

*Ed - This is the account
where they get 15 quotations
for original LOW BIDDER does
not have a chance.
All are given a chance
to call 3 or 4 times until
the price is cut down
to, where the other who
has just give up. 10/2/61
WEYERHAEUSER now in -
No. 1012 1/2 there today, in*

DEFENDANTS' EXHIBIT 588

Continued

Continued Exhibit Text 

469
UC-436

October 12, 1961

Trenton Cotton Mills, Incorporated
Statesville,
North Carolina

F.O.B. Plant, Full Freight Allowed

Mr. Caldwell Kagan, Jr.

Salesman: Mr. R. L. Hubbard

500	3" O/L	41	20 3/4	27 3/4	350 Tex St	1G-1P	3	872.40
					90/69			



M. M. Harrison, Jr. - Highland Container Co.

DEFENDANTS' EXHIBIT 612

Document No. UC-485

Description of Document:**Memorandum****Date:**

Nov. 21, 1961

Addressed to:

F. B. Grimes—Spartanburg Sales Mgr.

Written by:

E. Edmonds—Spartanburg Salesman

Other data:

cc: J. H. Goodman—Spartanburg Service Mgr.

FORM 2-572


UNION BAG-CAMP PAPER CORPORATION

TO Mr. F. B. Grimes AT Startsburg SUBJECT Alpha Industries
FROM E. Edmonds AT Knoxville DATE November 21, 1961

CC: Mr. J. H. Goodran

Frank, Mr. Sam Galber, President of the subject, reported that Head Container quoted a price of \$543.00 P/L for the 6,000 order which we quoted \$721.45 P/L.

I have reason to believe Mr. Galber is telling the truth about the price quoted.


E. Edmonds

EE:ee

NOV 25 1961

Ch/EE 612

DEFENDANTS' EXHIBIT 838

Document No. SJ-775
(Salesman's Call Report)

Written by:

William O. Wren, Salesman

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other data:*

Mr. Tidwell—buyer for customer "Mead, Atlanta"—
the Mead Corp.

Exhibit Text

* Handwritten text of body of Exhibit is as follows:

"Mr. Tidwell said Mead, Atlanta, had lowered their price to 140.00 per m on their 30 lb Banana box. Our price was lowered to 165.00. I don't think he is telling the truth."

DATE 4-24-61	CUSTOMER Lullhorn, Benson
ADDRESS Lullhorn	
CALL REPORT 775: Silver said - mail artists had lowered - then price to 190 ⁰⁰ per an on this 30th Benson said price was lowered to 765 ⁰⁰ & that this is telling the truth.	
SALESMAN <i>W</i> 775	

dep. in 138

DEFENDANTS' EXHIBIT 839

Document No. SJ-776
(Salesman's Call Report)

Written by:

William O. Wren, Salesman.

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other data:*

Mr. Tidwell—buyer for customer
“Inland”—Inland Container Corp.
“Mead, Atlanta”—The Mead Corp.

Exhibit Text

* Handwritten text of body of Exhibit is as follows:

“Mr. Tidwell showed me a calling card of Ray Williams from Inland with \$140.00 and said Mead Atlanta had given him a price of 138.00 for his 30 lb Banana box our last price was \$165.00 I don't think he has these prices. He knows the market is shakey and is trying for a rockbottom price.”

DATE	5-17-61	CUSTOMER	Bullmon Banana Co.
ADDRESS	Bullmon Ala.		
CALL REPORT:	Mr. Leland Stewart me a telling parcel of my tobacco from England with which it was not that good Atlantic had given him a price of 15¢ for his 30th Banana Box my last price was 16¢ I don't think he has the price. He knows the market in Turkey. And is going for a part better price.		
SALESMAN	Alva	776	

DEFENDANTS' EXHIBIT 927

Document No. SJ-895
(Salesman's Call Report)

Written by:

Lloyd Edward Duncan, Jr., Salesman

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other data:*

"St. Regis"—St. Regis Paper Co.

"Mead"—The Mead Corp.

"Owen-III"—Owens-Illinois Glass Co.

"Mengle"—Mengel Division of Container Corporation
of America

Exhibit Text

* Handwritten text of body of Exhibit is as follows:

"Mr. F. S. Braswell, PA. at Lee Bros. Fdy.,
Anniston, said we are 10% to 11% high on our
quotation dated Dec. 4, 1961. He showed me St.
Regis quotation dated Jan. 2, 1962. Mead, Owen-III,
and Mengle are other suppliers. lower than St. Joe.

St. Regis 1/2/62

#12 Box

5M-\$249.90

7500- 348.00

#14

1500-\$422.31

2500- 421.95

St. Joe 12/4/61

#12 Box

5M-279.05

7500-242.00

#14

2000-471.55

3000-467.10"

SALES INTERVIEW REPORT

ST. JOE PAPER CO.

Birmingham Container Division

TO	Completed
<input checked="" type="checkbox"/> Sales Manager	1/2/62
<input checked="" type="checkbox"/> Gen. Manager	
<input checked="" type="checkbox"/> Production Manager	
<input checked="" type="checkbox"/> Sales Service	
<input checked="" type="checkbox"/> Other	
<input checked="" type="checkbox"/> National Accounts	
<input checked="" type="checkbox"/> Sales Record Clerk	

Salesman: Ed. DumasDate: Jan 4, 1962Firm Name: St. Joe Paper Co.Address: Birmingham, AlabamaPerson Interviewed: Mr. F. A. Cornwall Title: P. A.

Survey	Solicitation	Quote	Sample	Order	Order Lost	Entertainment	Complaint
	<input checked="" type="checkbox"/>	Requested	Requested	\$	\$	\$	
		Follow Up	Follow Up				

Report

Mr. F. A. Cornwall, P.A. at the
Box 76, Cornwell, said we
are 10% to 14% like our
quotations dated Dec 4, 1961. He
advised our St. Regis quotation
dated Jan 22, 1962 is good,
even better and more than
other suppliers lower than St. Joe

St Regis 1/2/62

St Joe 12/4/61

12 Box

12 Box

Follow Up: SM - 249.90

SM - 279.05

75% - 248.00

75% - 248.00

14

14

Comment: 1500 - 429.31

2000 - 471.55

2500 - 421.95

3000 - 417.10

895

4/6.927

DEFENDANTS' EXHIBIT 999'

Document No. SJ-1042
(Salesman's Call Report)

Written by:

William C. Graeme, Salesman

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other Data:*

Mr. Brown—buyer for customer

"Union"—Union Bag-Camp Paper Corp.

"Meade"—The Mead Corp.

Exhibit Text

- * Body of handwritten text of exhibit is as follows:

"Mr. Brown said he has received new quotes from Union and Mead that are under ours in like quantities.

He showed me their prices & the following is this information.

Our price	Competition.	Brown gave us
#2 67.65		an order for 3
#3 85.45	62.00 (Mead)	sizes at our
#5 90.75	83.40 (Mead)	competition's
#6 discontinued	83.50 (Union)	level. Please
		send him new
#8 72.45	69.00 (Union)	quotes at com-
small book folder....62.00	59.00 (Union)	petitive prices."
large " "67.80	64.00 (Union)	

Pctd. 10-8-62

CALL REPORT

Salesman Harris Date 10/4/62
 Name Uniform Printing & Supply Co. Buyer Bruce Brown
 Street _____ Telephone _____
 City Harrisville Follow Up _____
☐ Inquiry Attached ☐ Sample Order Attached ☐ Orders Enclosed

Report: Mr. Brown said he has received new quotes from
Union & heard that our index was in the quantities. He
threw in their price & the following is the information:

	our price	Competition	Brown gave us an order
# 2 (100) 67.65	62.00 (Union)	for 3 yrs at our competitor's	
# 3 85.45	83.40 (Union)	and please send him	
# 5 90.75	83.50 (Union)	new quotes at competition	
# 6 discontinued		prices	
# 8 72.45	69.00 (Union)		
small book p/b 62.00	54.00 (Union)		
large " 87.80	64.00 (Union)		

1042

def 2 979

DEFENDANTS' EXHIBIT 1019

Document No. SJ-1065
(Salesman's Call Report)

Written by:

William C. Graeme, Salesman

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other Data:*

Joe—Joe Stone, buyer for customer

"CCC"—Continental Can Co.

"Meade"—The Mead Corp.

"Lee"—Lee Taylor, Sales Service Mgr., St. Joe

"Jack"—Jack Wyche, General Manager, Port St. Joe
Plant, St. Joe

Note by Wayne Ashley, Asst. Sales Mgr., St. Joe

Exhibit Text

* Handwritten body of text of Exhibit is as follows:

"Joe said our price on the #10 carton (this represents 50% of his volume) is 5% high—CCC was low. with Meade a close second, we were third from low. On the rest of the sizes we were between 7% & 8% high. At any rate he let us meet CCC's price of 814.00 per M for his next quarters business of #10."

File for Coling Lee - Pass to Jack. w.
CALL REPORT *(P.L.)* *(1/12)* *st*

Salesman Greene Date 6/21/62
 Name U.S. Rubber Co. Buyer Joe Stone
 Street _____ Telephone _____
 City Hogansville Follow Up _____

Inquiry Attached _____ Sample Order Attached _____ Orders Enclosed _____

Report Joe said our price on the #10 carton (this
replaces 50% of his volume) is 5% high - CCC
was low with made a close second, we were third
from low. On the rest of the page we were
between 7% - 8% high. At any rate he
said we must CCC's price of \$14.00 per M for
his next quarters business of #10

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STANLEY, *Chief Judge*: The plaintiff, United States of America, seeks by this civil action to prevent and restrain an alleged violation of Section 1 of the Sherman Act (15 U.S.C. § 1). Briefly summarized, the complaint charges that "the defendants have engaged in a combination and conspiracy in unreasonable re-

straint of . . . interstate trade and commerce in corrugated containers, in the Southeastern United States, in violation of Section 1 of the Sherman Act"; that the "combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants to exchange among themselves information respecting prices that they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers"; that for "the purpose of effectuating the . . . combination and conspiracy the defendants have done those things which . . . they combined and conspired to do"; and that the "combination and conspiracy has had the effect, among others, of unreasonably restricting price competition in the sale of corrugated containers to purchasers located in the Southeastern United States."

Each defendant timely filed answer denying, in all material respects, the allegations of the complaint. Additionally, defenses are raised based on the provisions of a consent decree approved and entered on April 23, 1940, by the United States District Court for the Southern District of New York, in the action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" (Civil Action No. 8-318).

The case was tried by the Court without a jury. The commendable cooperation of counsel for the plaintiff and for all of the defendants in streamlining both discovery procedures and the presentation of evidence at the trial, resulted in many of the facts, including documents and other exhibits, being stipulated. Appreciation is again expressed to all counsel for their efforts and accomplishments in this regard.

The Court, after giving due consideration to the

pleadings and the evidence, including exhibits and stipulations, the requests and briefs submitted by the parties, and the oral arguments of counsel, now makes and files herein its Findings of Fact and Conclusions of Law, separately stated:

FINDINGS OF FACT

I. GENERAL FINDINGS

1. Jurisdiction of the subject matter duly appears, and proper venue of the defendants is not contested.

2. For purposes of brevity, the defendants are referred to herein by the following abbreviated names:

Container Corporation of America	Container Corporation.
Albemarle Paper Manufacturing Company	Albemarle.
Carolina Container Company	Carolina.
Continental Can Company, Inc.	Continental.
Crown Zellerbach Corporation	Crown Zellerbach.
Dixie Container Corporation	Dixie.
Dixie Container Corporation of North Carolina	Dixie of North Carolina.
Inland Container Corporation	Inland.
International Paper Company	International.
The Mead Corporation	Mead.
Miller Container Corporation	Miller.
Owens-Illinois Glass Company	Owens-Illinois.
St. Joe Paper Company	St. Joe.
St. Regis Paper Company	St. Regis.
Tri-State Container Corporation	Tri-State.
Union Bag-Camp Paper Corporation	Union-Camp.
West Virginia Pulp and Paper Company	West Virginia.
Weyerhaeuser Company	Weyerhaeuser.

3. Except as otherwise stated or required by context, the facts herein found occurred or existed within the period from January 1, 1955, to October 14, 1963 (hereinafter referred to as the "period covered by the Complaint"), and within, and are limited to the Southeastern United States (herein defined as the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee and Kentucky).

4. Each defendant engaged in the manufacturing and selling of corrugated containers in the regular

course of its business, except that the following defendants were not engaged in the corrugated container business in the Southeastern United States prior to the date set forth opposite their respective names:

Albemarle	September 9, 1959.
Continental	October 28, 1956.
Crown Zellerbach	November 30, 1955.
Dixie of North Carolina	March 1, 1959.
Mead	December 27, 1956.
Owens-Illinois	October 4, 1956.
St. Regis	October 2, 1958.
West Virginia	September 30, 1957 (except through its subsidiary Hinde & Dauch).
Weyerhaeuser	May 1, 1957.

5. Most of the corrugated containers sold by each of the defendants in the regular course of its business were manufactured by it upon customer order, and in accordance with the specifications prepared by or for the particular customer so ordering, as to the style, dimensions, weight, strength, color, printing, type of joint, and other physical characteristics, and, unless otherwise expressly designated, whenever corrugated containers are referred to herein they are of the character described in this Finding.

6. The basic material used in the manufacture of corrugated containers is corrugated containerboard consisting of one or more sheets of a corrugated material sandwiched between two or more sheets of linerboard.

7. Each defendant, in the regular course of its business, has sold and shipped substantial quantities of corrugated containers to customers located in states other than the states in which said corrugated containers were manufactured.

II. THE INDUSTRY

8. Aggregate dollar sales of corrugated containers for all defendants for each year since, and including, 1961 were in excess of \$100 million per year. At the time of the filing of the Complaint herein, the aggregate shipments of corrugated containers of all defendants from plants in the Southeastern United States represented approximately ninety per cent (90%) of total shipments of corrugated containers from all plants in the Southeastern United States.

9. During the period covered by the Complaint, there has been growth and expansion of the corrugated container industry in the Southeastern United States. From an industry comprised in 1955 of 30 manufacturers having a total of 49 corrugated container manufacturing plants, it has grown to an industry comprised in 1963 of 51 manufacturers having a total of 98 such plants. In January of 1955, the beginning of the period covered by the Complaint, 9 of the 18 defendants, and 21 non-defendants, were engaged in the corrugated container business in the Southeastern United States. In 1963, the end of the period covered by the Complaint, there were a total of 18 defendant and 33 non-defendant corrugated container manufacturers in the Southeastern United States. During the same period, shipments of corrugated containers from plants located in the Southeastern United States increased from slightly over 9 billion square feet in 1955 to almost 16 billion square feet in 1963. The growth and expansion is illustrated by the following statistics showing the number of such

plants in the Southeastern United States and the volume of shipments therefrom:

Year	Total	Number of Plants		Shipments of Corrugated Containers (Millions of Sq. Ft.)
		Defendants	Others	
1955.....	40	18	31	9,077
1956.....	56	21	35	9,659
1957.....	59	30	29	10,026
1958.....	67	36	31	10,400
1959.....	71	43	28	12,328
1960.....	76	46	30	12,266
1961.....	81	53	28	13,481
1962.....	85	55	30	14,831
1963.....	98	58	40	15,846

10. In 1963, there were more than 10,000 purchasers of corrugated containers in the Southeastern United States and, in addition, several thousand potential purchasers of such containers. In that year, the defendants employed in the aggregate more than 411 sales personnel to sell their corrugated containers who, in the course of their sales activity in behalf of their respective companies, each business day made on the average 4 or 5 calls each on purchasers or potential purchasers. In October, 1963, the defendants had the following number of sales personnel regularly soliciting corrugated container business in the Southeastern United States:

Company	Number	Company	Number
Container Corporation.....	57	Mead.....	26
Albemarle.....	9	Miller.....	7
Carolina.....	15	Owens-Illinois.....	59
Continental.....	20	St. Joe.....	12
Crown Zellerbach.....	27	St. Regis.....	23
Dixie.....	12	Tri-State.....	5
Dixie of North Carolina.....	3	Union-Camp.....	36
Inland.....	24	West Virginia.....	17
International.....	23	Weyerhaeuser.....	36

11. Throughout the period covered by the complaint, there has been an ample supply of raw materials

available from competitors and from others for manufacturing corrugated containers. Necessary machinery and equipment has been available from numerous suppliers. Initial investment for a corrugated container manufacturing facility is relatively low, approximating as little as \$50,000 to \$75,000 for a minimum size viable enterprise.

12. The capacity to supply all purchasers of corrugated containers in the Southeastern United States has exceeded in each of the years from 1955 through 1963 the demand of purchasers for such containers.

13. The costs of manufacturing corrugated containers vary from plant to plant, and for each plant manufacturing corrugated containers unit costs vary with the ratio between that plant's production and capacity. Generally, each order which increases a plant's ratio of production to its capacity represents an increasing profit or diminishing loss for it. Each plant attempts to obtain orders to enable it to operate at all times at as favorable a ratio of production to its capacity as possible.

14. The demand for corrugated containers is determined by the volume of sales of the wide variety of disparate products manufactured and sold by the many thousands of purchasers of corrugated containers. Purchasers do not buy corrugated containers except as they need them for shipping their products, and do not build up inventories of such containers. Purchasers of corrugated containers do not enter into long term commitments for their requirements. Purchasing is done generally on a spot or short term basis covering a purchaser's immediate or near term requirements.

15. During the period covered by the Complaint, the trend of corrugated container prices was downward, and while containerboard prices fluctuated dur-

ing the period they were substantially the same at the end of the period as at the beginning thereof, in contrast to the increase in prices during the same period for paper and allied products generally, and for all other commodities, excluding farm and food. During the same period, labor rates, machinery and equipment costs, and other production costs, for both corrugated containers and containerboard, increased.

III. NATURE AND EXTENT OF COMPETITION; EFFECT OF PRICE COMMUNICATION

16. Throughout the period covered by the Complaint, the corrugated container industry was and is highly competitive, and each defendant engaged in and was faced with price competition in the sale of corrugated containers; and the parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would so testify.

17. Throughout the period covered by the Complaint, every purchaser of corrugated containers had numerous alternate sources of supply, both actual and potential. Such purchasers were free to shift all or a part of their business from one supplier to another and they frequently did so. Although such purchasers generally did not make such shifts unless offered a lower price by another supplier, each defendant repeatedly lost customers and obtained new ones, and continuously had substantial losses and gains in its sales to particular customers. Tables 1 and 2 annexed to DX-1, and the Charts on pages 21 through 24 of DX-6, reflect business lost and gained from one year to the next for the period 1960-1962. The figures shown in said Tables and Charts are representative for each defendant of the entire period covered by the Complaint.

18. The following examples from Tables and Charts referred to in the preceding paragraph are typical of the extent of gains and losses in customers and in sales to particular customers experienced by each of the defendants throughout the period covered by the Complaint:

(a) In 1960, Container Corporation's plants in the Southeastern United States made sales of corrugated containers to a total of 3,132 accounts. Of these, 1,209 accounts, representing over 38% of all of the accounts sold by Container Corporation during that year, were new accounts; i.e., accounts which had bought nothing from any of Container Corporation's plants in the Southeastern United States during the preceding year. In addition, Container Corporation's sales during that year to another 488 of those accounts, representing over 15% of the total, amounted to more than 150% of its preceding year's sales to each of such accounts. Moreover, of the 3,132 accounts sold in 1960 a total of 1,210 (over 38%) were totally lost by Container Corporation in 1961, and its sales in 1961 to another 343 of these accounts (over 19% thereof) were less than 50% of its preceding year's sales to each of such accounts. Not only was a large percentage of Container Corporation's total Southeastern United States accounts involved in such gains and losses but the dollar volume of its sales to such accounts was also very substantial, accounting for over \$14,300,000 out of total sales of about \$29,400,000, or more than 48% of Container Corporation's total corrugated container sales from plants in the Southeastern United States.

(b) In 1960, Albemarle's plant at Richmond, Virginia, sold a total of 291 accounts. Of these, 92 (over 31%) were new accounts. Albemarle's sales in 1960 to another 49 accounts (over 16% of Albemarle's total accounts) amounted to over

150% of its preceding year's sales to each of such accounts. Of the 219 accounts sold by Albemarle in 1960, 96 (approximately 33%) were totally lost by it in 1961, and its 1961 sales to another 50 of these accounts (over 17%) were less than 50% of its preceding year's sales to each of such accounts. The dollar volume of Albemarle's 1960 sales to the accounts involved in such gains and losses amounted to almost \$1,200,000, or more than 67% of its total 1960 corrugated container sales of less than \$1,800,000.

(c) In 1960, Owens-Illinois' plants at Atlanta, Georgia, Jacksonville, Florida, Miami, Florida, and Salisbury, North Carolina, sold a total of 2,527 accounts. Of these, 908 (over 35%) were new accounts. Owens-Illinois' 1960 sales to another 381 accounts (over 15% of total 1960 accounts) exceeded 150% of its preceding year's sales to each of such accounts. Of the 2,527 accounts sold in 1960, 941 (over 37%) were lost by Owens-Illinois in 1961, and its 1961 sales to another 268 of these accounts (over 10%) decreased to less than 50% of its 1960 sales to each of such accounts. The dollar volume of Owens-Illinois' 1960 sales to the accounts involved in such gains and losses amounted to almost \$8,900,000, or more than 62% of its total 1960 corrugated sales from the above plants of less than \$14,300,000.

19. The record includes over 1,000 documents from the defendants' files. These documents are contemporaneous business records, most of which relate to specific purchasers, prepared by employees directly engaged in the sale of corrugated containers. They constitute a sampling from defendants' files, and tend to portray independent and unrestricted price competition by each of the defendants. This sampling relates to hundreds of purchasers of corrugated containers and to thousands of transactions with such

purchasers. Among other things, these documents establish that during the period covered by the Complaint:

(a) In order for a supplier or prospective supplier to compete effectively for the business of a purchaser, there is a vital need for information as to the price alternatives available to that purchaser.

(b) Purchasers usually informed suppliers and prospective suppliers as to prices most recently charged or quoted by competing suppliers and identified the particular supplier or suppliers charging or quoting such prices.

(c) Purchasers often informed suppliers and prospective suppliers as to the particular prices which must be met or beat in order to obtain or retain business.

(d) Upon obtaining such price information, suppliers and prospective suppliers often reduced their prices.

(e) Absent such price information, a supplier or prospective supplier often quoted prices higher than those recently charged or quoted by other suppliers.

(f) Each defendant often encountered situations in which the prices most recently charged or quoted by it were cut by other defendants, and responded to such price cutting by meeting or beating the prices quoted by such other defendants.

(g) Each of the defendants endeavored to obtain additional sales by cutting the prices which other defendants had most recently charged or quoted to their customers or prospective customers.

20. Plaintiff was furnished listings showing the name and address of every corrugated container customer in the Southeastern United States of each of the defendants, aggregating more than 10,000 such customers. No evidence was adduced by plaintiff from

any of such *customers* showing or in any way indicating that the prices charged by any one or more of the defendants were stabilized or harmonized by the requesting or furnishing of price information by or between any of the defendants, or showing or in any way indicating that the prices charged or quoted such customers were any higher than they would have been had there not been any such requesting or furnishing of price information, or showing or in any way indicating any uniformity or parallelism of prices between or among any two or more of the defendants.

21. The record contains statistics, together with graphical presentations prepared therefrom, showing for the entire period covered by the Complaint the four-week price trend of each plant of each defendant, except Albemarle, Miller and St. Joe, and the average monthly prices of St. Joe. These statistics tend to demonstrate the absence of any general uniformity, harmony, stability, or parallelism in prices either as among the several defendants or among the plants of individual defendants. Most price trends varied widely among the plants of the several defendants, both as to direction and as to degree.

IV. HOW PRICES DETERMINED

22. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, each defendant exercises its own business judgment. Many factors influence the decision, including, among others, the following: (a) estimates prepared from its internal manual; (b) current plant production load or existence of idle time in its plant, a condition which varies widely in each plant from week to week, season to season, and with the rise and fall of business activity of its customers; (c)

suitability of the equipment in its plant for the production of the particular container and the expense of obtaining new equipment when necessary; (d) availability of any special materials needed to produce the order; (e) desirability of adding the particular order to the then scheduled plant production mix and the ability to do so, which varies continuously in the operation of the plant; (f) convenience of customer's plant location for servicing and cost of delivery; (g) size of the order, e.g., carload or less than carload shipment, and customer's prescribed delivery schedule; (h) customer's credit rating; (i) growth prospects of the account and the possibility of substantial future orders; (j) the experimental or developmental character of the particular container and the need to gain manufacturing and marketing experience with respect to it; (k) amount of customer's business represented by the order; (l) general market conditions in the Southeastern United States and in the corrugated container industry particularly; (m) prices of its recent sales of the same or other corrugated containers to that customer; (n) customer loyalty; (o) effect of the order on its costs and profits; and (p) prices believed to have been most recently charged or quoted by competitors, when such defendant believes it has sufficient basis for such belief.

23. A defendant regularly supplying a customer with corrugated containers, when pricing an order from that customer for additional corrugated containers of the same or different specifications, would usually price such additional containers on the same basis used by it in pricing that customer's last previous order. The foregoing was subject to change when (1) there had been a change in any of the competitive or other market factors or conditions; (2) the specifications and volume requirements were not substantially

the same; or (3) there had been a change in raw material costs or other significant costs.

24. Most purchasers of corrugated containers generally purchased their containers from two or more of the defendants concurrently.

25. Prices which purchasers of corrugated containers would pay were determined on the basis of price alternatives available to them from existing and prospective suppliers. It was necessary for each supplier to meet or be below competition in order to retain its customers, and to meet or be below the prices and other terms offered by competitors in order to obtain new customers or additional business from existing customers.

26. The defendants, in selling corrugated containers, dealt with buyers who had knowledge of prices which had been and were being offered by competing suppliers of corrugated containers.

27. Before determining the price to be quoted to a specific purchaser for a corrugated container, each defendant was interested in all pertinent marketing information applicable to such account. Among other things, each defendant considered the price which that purchaser had most recently been charged or quoted for corrugated containers to be pertinent marketing information and considered it beneficial to have such information.

28. All corrugated containers made to particular specifications were substantially identical regardless of which manufacturer produced them, and purchasers of corrugated containers were able to and did shift from one supplier to another on the basis of price. With minor exceptions, therefore, no manufacturer of such containers was able to obtain a higher price for such containers than the price at which another manufacturer had sold or offered to sell like con-

tainers to such purchaser, and it was important to each manufacturer to have accurate information as to the price alternatives available to such purchaser. Moreover, some purchasers did not accept the offer of the manufacturer making the lowest initial quotation, but afforded other manufacturers an opportunity to meet such lower quotation, and if met, such purchasers often divided their purchases among some or all of the low-quoting manufacturers. In consequence, when a defendant obtained what it considered reliable information as to the most recent price to a specific customer for a specific corrugated container, in the majority of instances it quoted or charged substantially the same price, irrespective of whether the source of its information had been the purchaser or another supplier. In many instances, however, depending upon particular circumstances, each defendant quoted lower or higher prices, and in all instances the determination as to the price to be charged or quoted was its individual decision.

V. OBTAINING PRICE INFORMATION

29. Possible sources for obtaining the most recent price to a specific customer for corrugated containers included the defendant's own records of prior sales, the particular purchaser involved, or one of his present or former corrugated container suppliers. Usually such information was obtained from the defendant's own records of prior sales, or from the particular purchaser involved. As used herein, the words "most recent price" mean either the most recent price charged a specific customer in an actual sale, or the price most recently quoted.

30. On occasions, buyers furnish suppliers with incomplete, inaccurate, or misleading information as to prices offered by competing suppliers.

31. No defendant furnished any competitor most recent price information except in response to a specific request therefor. However, when such information was furnished, it was usually accurate.

32. The extent and frequency with which most recent price information was requested or furnished varied among the several defendants and among the plants and customers of the individual defendants.

33. There is no evidence of express assurance that any defendant who furnished such price information upon request of another defendant would be able to obtain price information from such other defendant.

34. There is no evidence that any employee of any defendant ever discussed with any employee of any other defendant the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information.

35. The parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would testify that he considered that he could (with the exceptions noted in Findings 71, 167, 186 and 261), request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision.

36. There is credible evidence tending to show that, generally speaking, when price information was requested of a defendant by a competitor, such de-

defendant's decision whether or not to furnish such information was not affected by any price or price level which such competitor had previously charged or quoted or which such competitor might thereafter charge or quote.

37. Throughout the period covered by the Complaint, each defendant felt free to cut a most recent price received from a competitor, and after receiving a most recent price from another defendant occasionally charged or quoted prices lower than those received.

38. No defendant at any time had any express agreement or understanding with any other defendant with respect to any price or prices to be charged or quoted for corrugated containers, irrespective of whether or not such defendant had requested from or furnished to the other any price information.

VI. THE 1940 CONSENT DECREE

39. On April 23, 1940, a consent decree was entered in an action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" in the United States District Court for the Southern District of New York (Civil Action No. 8-318).

40. In addition to Container Corporation and Inland, defendants herein, the following corporations were among the defendants in the aforementioned action:

Robert Gair Company, Inc., which was subsequently merged into Continental;

Gaylord Container Corporation, which was subsequently merged into Crown Zellerbach;

The Hinde & Dauch Paper Company, which was subsequently merged into West Virginia;

The Jackson Box Company, which was subsequently merged into Mead;

F. J. Kress Box Company, Niagara Corrugated Container Co., Inc. and Superior Paper Products Co., which were subsequently merged into St. Regis;

National Container Corporation, which was subsequently merged into Owens-Illinois; and

Eddy Paper Corporation and Kieckhefer Container Corporation, which were subsequently merged into Weyerhaeuser.

41. On April 20, 1940, in presenting the consent decree for the approval of the District Court in the above-entitled action, counsel for the Government stated in open court:

"The Government regards this decree as fully complying with the Departmental policy. We think it is a well drafted document, which fully satisfies the Department's policy, in that it presents a constructive program which is designed to insure, not only that the violations complained of will cease, but also that such steps will be taken by the industry as will redound to the general public welfare."

42. A *nolle prosequi* was signed in the companion criminal action (No. C-105-445) on April 23, 1940, and entered April 24, 1940. In its *nolle prosequi*, the Government stated:

That it is the publicly announced policy of the Department of Justice to recommend that indictments under the Antitrust Laws be *nolle prossed* in the event that defendants voluntarily submit a program, embodied in a consent decree, which goes beyond anything that might be achieved by successful criminal prosecution and which binds them to a course of conduct deemed to be in the public interest in preventing the causes of illegal restraints of trade and

in promoting free competition in an orderly market;

* * * * *

3. That the National Container Association and the corporate defendants hereinafter named, and The Stevenson Corporation have agreed to the entry of a consent decree, Civil No. 8-318, which embodies substantially the requirements in such matters set out in Paragraph 1 above;

4. That such consent decree has been tendered by defendants voluntarily and in good faith;

5. That in the opinion of the Department of Justice; the nolle prosequing of this case as to the defendants hereinafter named is justified pursuant to the policy stated in Paragraph 1 above; * * *

43. The consent decree was widely publicized, both when it was entered and in the years subsequent thereto, in the corrugated container industry, and each of the defendants in the instant case has been cognizant of the existence of the decree and of the terms thereof and has relied thereon.

44. The consent decree provides, in part, as follows:

3. Nothing contained in this decree limits the right of said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them, or any of them, to do, or to cooperate in doing, any act, or to engage in any practice, not enjoined by this decree, including but not limited to the following:

(a) gathering, auditing, and disseminating information as to the cost of manufacture of corrugated and solid fibre containers, the volume of production and shipment, the actual price (or base price derived from actual price) which the product has brought in past transactions, stocks of merchandise and materials on

hand, approximate cost of transportation, and any other facts pertaining to the condition or operation of the industry, and meeting to discuss such information and statistics without, however, reaching or attempting to reach any agreement or any concerted action with respect to prices or production of such containers; * * *

4. Nothing contained in this decree limits the right of a defendant to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors.

VII. MANUALS AND INTERNAL MANUALS

45. Most of the defendants prepared manuals for their own internal use containing formulae and schedules of costs and/or charges from the application of which their respective approximate manufacturing costs and/or price estimates could be computed for most corrugated containers manufactured by them. Such manuals contained schedules of costs and/or charges for corrugated container board of various weights, strengths and wall constructions stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. They also contained various costs and/or charges relating to the actual manufacture of corrugated containers. The manuals further contained schedules of costs and/or charges, commonly called set-up charges, for the setting up of the necessary machinery for the production of corrugated containers of various specifications. Various of such manuals have been revised from time to time to reflect changes in costs, products, materials, designs and market conditions. These manuals were variously referred to by the companies which prepared them, among other things, as "cost manuals," "pricing manuals," "pricing procedures" or "estimating manuals." Whenever these manuals are hereinafter referred to,

they are specifically described as "internal manuals." Generally, the internal manuals were for internal use, and not available to the other defendants.

46. At various times, manuals containing formulae and schedules of charges, from the application of which a price estimate could be computed for most containers manufactured by them, were prepared by each of the following: National Container Corporation, The Old Dominion Box Company, Inc., Crown Zellerbach (Gaylord Container Division) and Inland. Each of said manuals was made available to other manufacturers of, and customers for, corrugated containers. Except as otherwise stated, as used hereafter the word "manual" means one of the manuals referred to in this Finding.

47. The manuals were variously referred to in the trade, among other things, as "price lists," "estimating and pricing manuals," or "estimating manuals."

48. Each of the manuals contained a schedule of charges for corrugated container board of various weights, strengths and wall constructions for use in computing corrugated container prices according to the particular manual employed. These charges are stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. In the trade, these charges were variously called, among other things, an "area charge," "base," "base price," "board base price," "board factor," "multiplier," "level" and "board level."

49. The manuals also contained various charges relating to the actual manufacture of corrugated containers. Before the actual manufacturing process could begin, it was necessary to set up the production machinery to accommodate the particular specification, such as style, dimensions, printing, kind of joint,

etc., for each individual order and type of corrugated container. The manuals also contained a schedule of charges commonly called "set-up charges" to cover the cost of the setting up of the necessary machinery for the production of corrugated containers of various specifications.

50. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant took into account the price currently or most recently charged by it to that purchaser for the same or similar corrugated containers, the price alternatives available to the purchaser, its estimated manufacturing costs, desirability of such business, and the anticipated profit involved. In this connection, each of the defendants has used one or more of the manuals to compute price estimates on a substantial number of occasions in one or more of the following ways:

(a) By application of the formulae and schedules of charges set forth therein;

(b) By application of the formulae and schedules of charges set forth therein, but employing a board level different from that stated therein.

(c) By application of the formulae and schedules of charges set forth therein, but employing a set-up charge different from that stated therein;

(d) By application of the formulae and schedules of charges set forth therein, but employing other charges different from those stated therein;

(e) By any combination of the applications referred to in subparagraphs (b) (c) and (d) hereof; or

(f) By any of the applications hereinabove set forth, but then applying a discount to the result.

The extent of such use varied among the several de-

fendants; and among the plants and customers of individual defendants.

51. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant having an internal manual or internal manuals used such internal manuals in approximately the same ways and under the circumstances described in Finding 50, and often along with one or more of the manuals referred to in Finding 50. The extent of such use varied among the several defendants, and among the plants and customers of individual defendants.

52. If the same board level and set-up charge were used in computing a "manual" price for a corrugated container of particular specifications there would be, in most instances, little difference in the results of the computation, regardless of which manual was used in making the computation.

53. The actual price charged for corrugated containers was usually referred to in the trade as the "end price," which in most instances was different from any manual price referred to in Finding 52.

54. On those occasions when a defendant furnished to another defendant, upon his request, the most recent price to a specific customer for corrugated containers, such information usually was furnished either in terms of an end price or in terms of a board level. In the case of some defendants, such information was furnished only in terms of an end price.

55. On those occasions when a defendant furnished to another defendant, upon his request, the most recent price to a specific customer for corrugated containers, end prices usually were furnished when the request involved only a few different container items, and board levels usually were furnished when the re-

quest involved more than a few different container items.

56. When a customer ordered two or more different corrugated containers, specifying the same test board for all but otherwise involving different specifications, usually the supplier filled said order at prices reflecting for the entire order a constant charge for board.

57. Each defendant having its own "manual" or "internal manual," prepared the same, and any revisions thereof, independently and without any agreement or understanding with any other defendant.

58. Price or cost estimates for a particular corrugated container computed under any one of such internal manuals differed from the price or cost estimates for such container computed under internal manuals of other companies.

59. The great majority of sales of each defendant was made at prices less than the prices would have been if computed on any published manual. There is no regular, prevalent or uniform percentage variation from any such computation in common use among any of the defendants, or in use by any individual defendant. Table 3 annexed to DX-1, and the Charts at pages 47 through 68 of DX-6, contain data illustrative of the foregoing for the several defendants for the period covered by the Complaint.

60. When Crown Zellerbach in 1957 prepared and issued its manual as described in Finding 46, it adopted, and for a period of months followed, a policy to adhere to said manual. During that period, no employee had authority to quote or charge prices lower than prices computed on the manual, and as a result Crown Zellerbach lost a great volume of business. It was compelled to abandon that policy to avoid losing all of its business. By cutting prices, it regained the business it lost.

VIII. THE FIBRE BOX ASSOCIATION

61. The Fibre Box Association, hereinafter called the "Association," was a trade association with a nationwide membership consisting of manufacturers of corrugated and solid fibre containers. The Association had geographic divisions and zones. Zone 10 comprised the States of Virginia and North Carolina, and was known as the Piedmont Group. Zone 11 comprised the States of South Carolina, Georgia, Florida, Alabama, and those portions of Tennessee and Kentucky east of the Tennessee River with the exception of Boone, Campbell, Jefferson and Kenton Counties of Kentucky, and was known as the Southeastern Group. Each of the defendants except Albemarle, Miller and St. Joe was a member of the Zone 10, Piedmont Group, and/or the Zone 11, Southeastern Group.

62. The Association employed a statistician who supervised its statistical program as a part of which each member compiled and submitted to the Association a weekly summary showing, in square feet, the quantity of corrugated and solid fibre shipments and the dollar value of these shipments. From this data, the Association prepared an overall corrugated price trend which was obtained by dividing the total dollars of sales made to the trade by the total footage shipped. These overall corrugated box price trends were compiled and published monthly for each division.

63. An analyzed price trend was also prepared by taking the reported sales of a selected variety of the more standard containers and adjusting the same for the box size and size of run to a common basis. These trend figures were computed for every member of the zones and divisions as well as for each respective zone and division as a unit. These divisions and zone price trends, as well as aggregate shipment figures for each

member, were issued to each member approximately ten days after the close of each week, and included comparative price trend figures for the prior 4-week periods, months, quarters and years. However, the individual member price trend figure was given only to that member. Due to the variety of the materials used and the great variety in construction of the containers, as well as differences in the "mix" due to seasonal factors, the indexes showed only price trends and could not be used for price comparison between competitors nor to ascertain the prices charged for any particular type of containers sold.

64. Meetings of members of Zones 10 and 11 were ordinarily held every four weeks with a representative of the Association and Legal Counsel, and at these meetings there was a review of statistics and charts showing substantially the same information referred to in Findings 62 and 63. In addition, statistics showing the production of paperboard, containerboard and boxboard were reviewed and compared with an average and with the prior year; and total raw material inventory figures were reported. A discussion of current business conditions for the corrugated container industry was usually included on the program agenda, and a discussion of current and expected demand for corrugated containers as indicated by incoming orders was often a part of the meeting.

65. Individual customer prices were not discussed at Association meetings. On some occasions, before or after said meetings, representatives of some of the defendants attending the meetings furnished most recent price information when requested by a representative of another defendant.

66. On most occasions during this period, the regular four-week Association meetings of the Piedmont Group and the Southeastern Group were held jointly.

IX. FINDINGS AS TO CONTAINER CORPORATION

67. In the trade, Container Corporation, after November 15, 1960, was sometimes known as "Mengel," but only for its Memphis, Tennessee, Nashville, Tennessee, Chattanooga, Tennessee, Lexington, Kentucky, and Winston-Salem, North Carolina, locations. Container Corporation acquired a stock interest in Mengel Company in 1954 and continued to increase its holdings of Mengel Common stock, owning approximately 69% by December 1955, and approximately 97% by December of 1959. All of Mengel's preferred stock was retired in April 1956. On November 15, 1960, Mengel Company was merged into Container Corporation.

68. Container Corporation, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

69. On those occasions when, prior to January 1963, Container Corporation considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

70. Prior to January 1963, when Container Corporation received a request from another defendant for the most recent price to a specific customer for corrugated containers, Container Corporation usually furnished the information requested.

71. Since January 1963, it has been Container Corporation's policy that its personnel shall not request or furnish price information from or to other manufacturers of corrugated containers. Prior to 1961, Container Corporation permitted its plant sales man-

agers and general managers in the Southeastern United States to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers. Beginning in 1961, and continuing until January 1963, it was Container Corporation's policy that only its Southeastern Divisional Manager was permitted to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers.

72. The extent and frequency with which such information was requested and furnished varied among Container Corporation and the several other defendants and among the plants and customers of Container Corporation.

73. In the circumstances set forth in Findings 69 and 70, Container Corporation requested and/or furnished price information from and/or to each of the other defendants.

74. From time to time between 1958 and 1961, A. S. Clay, Sales Manager for the Winston-Salem Plant of Container Corporation, requested and furnished said price information. From time to time between 1955 and 1958, G. W. Colvin, when he was general manager of the Winston-Salem Plant of Container Corporation, and from time to time between 1961 and January 1963, when he was Southeastern Divisional Manager of Container Corporation, requested and furnished said price information.

75. As a general rule, pricing decisions were made by Container Corporation at the plant level, and the plant sales manager was primarily responsible for making price determinations. During the period between 1961 and January 1963, G. W. Colvin, Southeastern Divisional Manager, always communicated the price information he had received to the sales man-

ager of the specific plant and generally did not communicate any advice or instructions concerning the price to be charged by the sales manager, nor was he necessarily consulted by the sales manager concerning the price to be charged.

76. Container Corporation requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Container Corporation from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

77. Generally, it was the policy of G. W. Colvin, while Vice-President and Southeastern Divisional Manager for Container Corporation, not to cut a price that had been given to him. However, he testified that he knew of no such Container Corporation policy and that there were instances when Container Corporation had cut prices after obtaining price information from competitors, and he knew that there were some occasions when Container Corporation had its prices cut by competitors after giving price information to them. A. S. Clay had no rule, general practice, personal principle, or personal policy concerning the prices to be charged or quoted after he had received price information from competitors, and in each instance, he made the price determination himself.

78. When a Container Corporation plant sales manager requested and received price information as described in Finding 69, the sales manager used the information along with Container Corporation's internal manual, which was a cost rather than a sales price

manual, as well as his other market information, to help him determine whether he was interested in obtaining the business, and what price he would charge or quote that customer. The plant sales manager had no set policy with regard to submitting a quotation to a customer at a price lower than that which he had learned from a competitor. In determining his prices, each sales manager attempted to get as much as he could within reason. The sales manager felt no obligation with regard to a competitor who had furnished price information to him, nor was such obligation ever expressed to the sales manager by such a competitor.

79. In all instances, the determination as to the price to be charged or quoted by Container Corporation was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Container Corporation exercised its own business judgment.

80. As earlier stated, Container Corporation stopped requesting or furnishing price information in January 1963. A study of Container Corporation's analyzed prices at its plants shows that in the nine-month period from January to October 1963, average analyzed prices were substantially the same as the average analyzed prices at its plants in the nine-month period immediately preceding January 1963. Moreover, the range between the highest and lowest prices in each of its plants in the nine-month period before January 1963 was approximately the same as the range in those plants in the nine-month period from January to October 1963.

81. Container Corporation's price trends differed from those of each of its competitors, and there is no parallel between them.

82. Container Corporation's price trends also varied

from plant to plant, as shown by comparing the price trends of its plants for the years 1955 to 1963.

83. Container Corporation's prices also varied from month to month throughout the period covered by the Complaint.

X. FINDINGS AS TO ALBEMARLE

84. Albemarle, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Regis, although not necessarily at all times or in all areas or for all purchasers.

85. On those occasions when Albemarle considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

86. When Albemarle received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished, it was accurate.

87. The extent and frequency with which such information was requested or furnished varied among Albemarle and the several other defendants.

88. In the circumstances set forth in Findings 85 through 87, Albemarle requested and/or furnished price information from and/or to each of the other defendants, except Dixie of North Carolina, International, St. Joe and St. Regis.

89. The price information furnished by Albemarle related to prices charged customers in actual sales or prices actually quoted to customers.

90. From time to time, Anthony J. Bagley, President of Richmond Container from 1957 to September 9, 1959, and Division Manager of Albemarle after such date, and M. F. Dozier, Sales Manager of Richmond Container to September 9, 1959, and Division Sales Manager of Albemarle after such date, on occasion requested and furnished said price information.

91. Albemarle requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Albemarle from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

92. In all instances, the determination as to the price to be charged or quoted by Albemarle was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Albemarle exercised its own business judgment.

93. Albemarle's price trends differed from those of each of its competitors, and there is no parallel between them.

XI. FINDINGS AS TO CAROLINA

94. Carolina, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers.

95. On those occasions when Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

96. When Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

97. The extent and frequency with which such information was requested or furnished varied among Carolina and the several other defendants and among the customers of Carolina.

98. In the circumstances set forth in Findings 95 through 97, Carolina requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

99. There is no evidence that the price information furnished by Carolina related to prices quoted upon which an actual order had not at that time been received from the customer.

100. Carolina furnished price information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

101. From time to time, C. T. Ingram, Vice-President and General Manager of Carolina, and Carter Holbrook, Sales Manager of Carolina, on occasion requested and furnished said price information.

102. Carolina requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price infor-

mation received by Carolina from other defendants was taken into account and utilized by Carolina in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

103. In all instances the determination as to the price to be charged or quoted by Carolina was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Carolina exercised its own business judgment.

104. Carolina's price trends differed from those of each of its competitors, and there is no parallel between them.

105. Carolina's prices also varied from month to month throughout the period covered by the Complaint.

XII. FINDINGS AS TO CONTINENTAL

106. After October 26, 1956, Continental, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

107. On those occasions after October 26, 1956, when Continental considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. When Continental received a request from another defendant for the most recent

price to a specific customer for corrugated containers, usually the information requested was furnished. Continental neither gave to nor received from St. Joe any price information.

108. The extent and frequency with which such information was requested or furnished varied among the plants and customers of Continental.

109. From time to time between October 26, 1956, and January 1, 1957, and between January 1960 and March 31, 1963, Robert Groner, Jr., as one of Continental's Sales Managers; and from and after January 1, 1962, Jehan B. Johnson, as one of Continental's Sales Managers; and between October 26, 1956, and May 15, 1962, William B. Beams, as one of Continental's Sales Managers, requested and furnished price information, as described in Finding 107.

110. Continental requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Continental from other defendants was taken into account and utilized by Continental in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

111. When Continental furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

112. In all instances, the determination as to the price to be charged or quoted by Continental was its individual decision. In deciding whether to seek a particular order from a particular customer, or wheth-

er to offer to sell a particular container, and in determining the price to be charged, or quoted, Continental exercised its own business judgment.

113. Continental's price trends differed from those of each of its competitors, and there is no parallel between them.

114. Continental's price trends also varied from plant to plant, as shown by comparing the price trends of its plants from the date it entered the corrugated container business to the date of the Complaint.

115. Continental's prices also varied from month to month throughout the period it was in the corrugated container business.

XIII. FINDINGS AS TO CROWN ZELLERBACH

116. Crown Zellerbach, in seeking business from the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

117. On those occasions when Crown Zellerbach considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

118. When Crown Zellerbach received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

119. The extent and frequency with which such information was requested or furnished varied among Crown Zellerbach and the several other defendants, and among the plants and customers of Crown Zellerbach.

120. In the circumstances set forth in Findings 117 through 119, Crown Zellerbach requested and/or furnished price information from and/or to each of the other defendants.

121. The price information furnished by Crown Zellerbach related to prices charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the customer, but only after such a quotation was in the hands of the customer.

122. From time to time, from and after November 1958, Gordon M. Clark, for a part of said time Sales Manager and later Resident Manager of the Greenville, South Carolina, plant of Crown Zellerbach, requested and furnished said price information.

123. Crown Zellerbach requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Crown Zellerbach from other defendants was taken into account and utilized by Crown Zellerbach in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

124. When Crown Zellerbach furnished price information to other defendants, it gave Crown Zellerbach an insight as to who was actively competing for a particular piece of business.

125. In all instances, the determination as to the price to be charged or quoted by Crown Zellerbach was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in

determining the price to be charged or quoted, Crown Zellerbach exercised its own business judgment.

126. Crown Zellerbach's price trends differed from those of each of its competitors, and there is no parallel between them.

127. Crown Zellerbach's prices varied from month to month throughout the period covered by the Complaint.

XIV. FINDINGS AS TO DIXIE AND DIXIE OF NORTH CAROLINA

128. Dixie and its subsidiary, Dixie of North Carolina, are engaged solely in the box business. They are not part of an integrated company which is also engaged in the paper mill business. The only other non-integrated defendants are Carolina and Tri-State. As an independent box maker, which had already paid a profit on the paper, and had to make its profit, if any, out of the box, it was particularly sensitive to price fluctuations which characterized the industry.

129. Dixie, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Dixie of North Carolina, St. Joe and St. Regis, although not necessarily at all times or in all areas or for all purchasers. Dixie of North Carolina was not in competition with Albemarle, Crown Zellerbach, Inland, Miller, Dixie, St. Joe or St. Regis. It was in competition, in seeking business for the sale of corrugated containers, with each of the other ten defendants, although not necessarily at all times or in all areas or for all purchasers.

130. On those occasions when Dixie or Dixie of North Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was

usually requested from a defendant then supplying that customer with corrugated containers.

131. When Dixie or Dixie of North Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

132. The extent and frequency with which such information was requested or furnished varied among Dixie and the several other defendants, and among Dixie of North Carolina and the several other defendants. During differing intervals of time, Dixie did not request from or furnish such information to certain competitors.

133. H. L. Mitchell, Jr., was President of Dixie and Dixie of North Carolina. One of his purposes in seeking such information was to verify the accuracy of information secured from customers by salesmen of Dixie.

134. Mitchell found that some of the information furnished by competitors upon request was inaccurate.

135. The price information furnished by Dixie in most instances related to a price charged a customer in an actual sale. On occasion Dixie furnished information as to prices quoted upon which an actual order had not at that time been received from the customer. The price information requested and/or furnished by Dixie of North Carolina was "the last price he [the competitor of Dixie of North Carolina] got for the item or order."

136. In the circumstances set forth in Findings 130 and 131, Dixie and Dixie of North Carolina requested and/or furnished price information from and/or to each of the other defendants with which it competed.

137. From time to time, Mitchell, President of defendant Dixie, requested and/or furnished said price information.

138. From time to time, Joseph S. Schwind, Sales Manager for Dixie of North Carolina, requested and/or furnished said price information.

139. Mitchell gave competitors the most recent price to a specific customer with the hope that the competitor would not cut any more than necessary to get the business.

140. Mitchell had a policy of not calling the competition if he was going to cut a price; his experience was that some competitors would immediately reduce a price after answering an inquiry from Mitchell.

141. Dixie and Dixie of North Carolina requested price information from other defendants in order to aid them in making informed pricing and marketing decisions. Price information received by them from other defendants was taken into account and utilized by each of them in individually determining the prices to be charged or quoted by them in the same manner, to the same extent, and with the same effect as price information which they usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

142. In all instances, the determination as to the price to be charged or quoted by Dixie or Dixie of North Carolina was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Dixie and Dixie of North Carolina exercised their own business judgment.

143. Dixie's price trends and Dixie of North Carolina's price trends differed from those of each of their competitors, and there is no parallel between them.

144. Dixie's prices and Dixie of North Carolina's prices also varied from month to month throughout the period covered by the Complaint.

XV. FINDINGS AS TO INLAND

145. Inland, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

146. On those occasions when Inland considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

147. When Inland received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

148. The extent and frequency with which such information was requested or furnished varied among Inland and the several other defendants, and among the plants and customers of Inland.

149. In the circumstances set forth in Findings 146 through 148, Inland requested and/or furnished price information from and/or to each of the other defendants.

150. From time to time, during the period covered by the Complaint, Frank M. Talbot, Southern Region Sales Manager for Inland, and Barnell E. Roberts, Sales Manager of Inland's Macon, Georgia, plant, requested and furnished said price information.

151. In a written statement issued under date of

July 14, 1961, Inland's policy with respect to requesting and furnishing price information from and to other manufacturers of corrugated containers was set forth. It was binding upon all of its Sales Managers, including the said Barnell E. Roberts and Frank Talbot. Such policy was unilaterally and independently adopted by Inland. Such policy, and the deposition testimony of said Roberts and Talbot, establish that:

(a) Inland's purpose in the requesting and furnishing of price information was to enable it to be better informed in making price determinations.

(b) Its policy in this regard was in reliance upon, and believed by Inland to have been contemplated by, the aforementioned consent decree.

(c) Inland's policy was to request price information from another manufacturer if needed to make an intelligent price decision, and if such information was not obtainable from some other source. Such information was received usually and ordinarily from the purchaser. In some cases, such information was sought to verify a claim of a purchaser (who was attempting to have Inland reduce its price) that another supplier had reduced its price, in circumstances in which the salesmen doubted the reliability of such claim.

(d) Price information so received from another manufacturer was taken into account by Inland's Sales Managers in the same manner and with the same effect as like information usually and ordinarily received from the purchasers, provided the price information received from purchasers was considered reliable.

(e) In a situation in which Inland had a contract with a customer, who was then also being supplied by other manufacturers and during a

period when prices had been low for years, and the customer reported that another supplier in the account had reduced its prices, which report the Sales Manager believed doubtful, such Sales Manager would attempt to verify such report with such other supplier because he did not desire to reduce Inland's prices any lower than in fact the prices had been lowered as represented by the customer.

(f) Said policy authorized Inland's Sales Managers to furnish price information requested by other manufacturers within the limits prescribed for requesting such information. Whether to furnish such information upon request was a matter of individual decision by the Sales Managers. It was believed by them that it served Inland's self-interest to furnish such information upon request because they believed that they could not obtain price information from another manufacturer unless they usually furnished price information when requested.

(g) Said policy and Inland's practice thereunder was to request and furnish only the price of the most recent past sale.

152. When Inland furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

153. In all instances, the determination as to the price to be charged or quoted by Inland was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Inland exercised its own business judgment.

154. Inland's price trends differed from those of each of its competitors, and there is no parallel between them.

XVI. FINDINGS AS TO INTERNATIONAL

155. International, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

156. Two employees of International were called by plaintiff to testify on deposition, Edward Agar, from 1948-1957 manager of International's Container Division plant in Spring Hill, Louisiana, and since 1957 manager for the Southern Region of the Company's Container Division, and Hugh L. Reid, for the past 16 years, general manager of International's Container Division plant at Georgetown, South Carolina.

157. During the period 1955 to 1963, at times purchasing agents attempted to persuade International to lower its prices by advising International's sales representatives that its prices were too high when compared with those of other suppliers, and offered International the chance to meet a lower price in order to obtain or retain the business. Sometimes the purchasing agent identified the other supplier and price. Sometimes the price information supplied by the purchasing agent was incomplete, inaccurate, or misleading. On occasion, in the period prior to about June 1962, International made telephone calls to other suppliers to verify the information as to past prices charged which had been supplied by the purchasing agent.

158. Communication of price information by International to other suppliers of corrugated containers occurred without any pattern or regularity, and varied from period to period. Frequency ranged from about 10 or 12 calls a month to about 2 or 3 calls a month, in-

cluding those made as well as received, with many days without any calls, and on some occasions 2 or 3 a day.

159. International had 23 salesmen in the Southeast making an average of 4 to 5 calls daily on customers and potential customers. In other words, International's salesmen in soliciting business made on the average 92 to 100 calls a day, or 1800 to 2000 calls a month, on purchasers of corrugated containers who bought on a spot or short-term basis covering immediate or near-term requirements. In 1962, International had 449 customers in the Southeast out of more than 10,000 potential customers.

160. Agar had broad administrative responsibilities for a number of plants, including administration, production, sales and personnel, and did not have any direct pricing responsibility. Accordingly, he had no files showing International's prices, and on the infrequent occasions when he was asked for such information by a competitor he obtained it from the plant manager. While Reid had sole pricing authority for the Georgetown plant, and had files showing past prices charged by International, he had many other duties in operating the plant and spent only a minor portion of his time in determining prices.

161. In the circumstances set forth in Findings 157 through 160, and in Findings 162 through 169, International requested and/or furnished price information from and/or to each of the other defendants, except Albemarle and St. Joe. One of International's employees, Reid, testified that he was not sure he had ever, in the eight-year period in question, communicated price information to five of the defendants, and the other International employee, Agar, testified that he did not know four of the 17 other defendants. As to the eight of the defendants about which he was

questioned, he could not recall any incident when he gave or received any price information from them.

162. On those occasions when, prior to June 1962, International considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

163. International requested price information on past transactions from another supplier at times when International had been invited by a customer to meet the price of such other supplier.

164. When offered the opportunity by a customer to meet the price of another supplier, International sought information as to past prices charged by such other supplier to verify the customer's information about such supplier's price in those instances where International wanted to make certain it was a real price and the circumstances justified International making an effort to obtain the business of the customer.

165. Prior to June 1962, when International received a request from another defendant for the most recent price to a specific customer for corrugated containers, International usually furnished the information requested.

166. In responding to specific requests for price information on past transactions by other suppliers of corrugated containers, International furnished only end prices for the particular corrugated box as to which inquiry was made.

167. In June 1962, International decided that it would no longer furnish price information to, or request such information from, other suppliers of cor-

rugated containers. While no formal announcement was made of such decision, those who called requesting information were informed that such information would not be furnished.

168. During the time when International furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

169. International requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. The price information received by International from other defendants was taken into account and utilized by International in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

170. There is no evidence that any employee of any defendant ever discussed with any employee of International the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information.

171. As one of the factors in computing a price to offer or charge a customer, International on all occasions used its own internal estimating manual. International's manual was prepared and revised independently by it without any agreement or understanding with any other defendant. International did not give its manual to any competitor or customer but retained

it for its own use. International did not discuss its manual, or its preparation or revision, with any competitor.

172. International had no manuals of its competitors, except those of National Container Company and Gaylord Container Corporation, which had been obtained from customers of International. On infrequent occasions, in the period about 1958-1960, with respect to accounts which were then being sold by Gaylord, reference was made to the Gaylord manual as an added aid with other factors in helping the plant manager make up his mind as to the price he would quote the customer. If in those accounts the price of a particular container was less when computed on the Gaylord manual than on International's internal manual, and this was business which Reid desired to retain or obtain based on many other factors as to the desirability of the business, he would take into consideration the price developed from the Gaylord manual. In a period sometime before 1958, the National Container manual was referred to by Reid in the same way in competing for business on accounts which were being supplied by National Container Corporation, although with less frequency.

173. There was no relationship in the prices developed on International's internal manual and on Gaylord's manual. With respect to some containers, International's manual would develop a higher price; with respect to others, it would develop a lower price.

174. In all instances, the determination as to the price to be charged or quoted by International was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, International exercised its own business judgment.

175. International increased its capacity to compete by opening new plants in other market areas in the Southeast. In 1957, a new plant was opened in Auburndale, Florida, and in 1962, a new plant was opened in Statesville, North Carolina.

176. During the period 1955 to 1963, the trend of International's prices was downward, while at the same time costs had increased. International continually instructed its employees to attempt to improve earnings by obtaining the highest possible prices for corrugated containers.

177. International lost customers to, and gained customers from, other suppliers of corrugated containers on the basis of price. In 1960, out of 408 separate accounts in the Georgetown and Auburndale plants, 162 accounts, or almost 40%, were totally new accounts gained by these plants; while 64 accounts represented customers lost. Of the 408 accounts in 1960, 110 represented customers where, in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus in 1960, a total of 336 out of 408 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). In 1961, out of 447 separate accounts at these same plants, 135 accounts, or 30%, were totally new accounts; 96 were lost. Of the 447 accounts in 1961, 143 represented customers where in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus, in 1961, a total of 384 out of 447 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). In 1962, out of 449 separate accounts at

those plants, 116 accounts, or 28%, were totally new accounts; at the same time more than 28% of the accounts, or 114, were lost. Of the 449 accounts in 1962, 184 represented customers where in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus in 1962, a total of 414 out of 449 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). These figures are representative of the entire period covered by the Complaint.

178. International's price trends differed from those of each of its competitors, and there is no parallel between them.

179. International's price trends also varied from plant to plant, as shown by, comparing the Georgetown and Auburndale plants' price trends for 1961 and for 1955-1963.

180. International's prices also varied from month to month throughout the period covered by the Complaint.

181. As earlier stated, International stopped requesting or furnishing price information in June 1962. A study of International's analyzed prices at its Auburndale, Florida, and Georgetown, South Carolina, plants shows that in the twelve-month period after June 1962, average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June 1962. Moreover, the range between the highest and lowest prices in the Georgetown and Auburndale plants in the year before June 1962, was approximately the same as the range in those plants in the year following June 1962.

XVII. FINDINGS AS TO MEAD

182. Mead, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not at all times or in all areas or for all purchasers.

183. On those occasions when prior to 1961, and thereafter under the circumstances set forth in Findings 186 and 187:

(a) Mead considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

(b) When Mead received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

(c) During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

184. The extent and frequency with which such information was requested or furnished varied among Mead and the several other defendants, and among the plants and customers of Mead.

185. The price information which Mead requested and/or furnished, as described in Findings 183 and 184, was requested and/or furnished from and/or to each of the other defendants, and related to prices charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the customer.

186. In June 1961, Mead issued a written directive to all of its personnel, one of the effects of which was to prohibit its personnel from requesting or furnishing price information from or to other manufacturers of corrugated containers. In the fall of 1961, the Containers Division of Mead, at the request of its Southeastern Regional Sales Manager, Virgil C. Shutze, temporarily relaxed the aforesaid prohibition against requesting and furnishing price information from and to other manufacturers of corrugated containers, to a limited extent as to him personally. Thereafter, said Virgil C. Shutze relaxed said prohibition to some extent to District Sales Managers under his supervision. Said Virgil C. Shutze, as Southeastern Regional Sales Manager for Mead's Containers Division, had jurisdiction over Florida, Georgia and Tennessee. During the period of the aforesaid relaxation of the prohibition against requesting and furnishing price information from or to other manufacturers of corrugated containers, District Sales Managers of Mead's Containers Division, Southeastern Region, requested and furnished the most recent price to a specific customer for corrugated containers from or to other defendants in the circumstances herein described. In the spring of 1962, Mead called its Southeastern Regional Sales Manager and the District Sales Managers of Mead's Containers Division to Mead's head office in Dayton, Ohio, at which Mead's policy was reiterated by Mead's principal executive officers and those present were told that no exceptions would be countenanced. This has been Mead's policy since the spring of 1962.

187. In the fall of 1961, Mead attempted to accomplish a general increase in its corrugated container prices. Several competitors also attempted to raise their prices at about the same time. Customers

were not a dependable source of information as to the prices offered by competing suppliers. Without accurate market price information, when a customer stated that other corrugated box manufacturers had not increased their prices, Mead's sales personnel could either increase Mead's price as instructed and take the chance of losing the account, or keep the price at a level which the customer claimed he was getting from other suppliers and be sure to keep the account. Mead continued to lose position with its customers and it got to be an untenable situation. Mead thereafter temporarily relaxed, to a limited extent, as described in Finding 186, its previous prohibition against requesting and furnishing price information from or to competitors, in order to permit Mead employees to seek information as to market price levels in accounts for which Mead was competing.

188. A study of Mead's analyzed prices at its Atlanta, Georgia, Durham, North Carolina, and Miami, Florida, plants shows that in the twelve-month period after April, 1962, average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June, 1961.

189. On those occasions when Mead did seek and receive price information from another defendant:

(a) Mead sought such price information only when no other source of such information was available, or when it had obtained recent price information from the purchaser and desired to ascertain the accuracy of such information.

(b) Mead requested such price information for the aforesaid reasons in order to aid it in making informed pricing and marketing decisions. The price information received by Mead from other defendants was taken into account

and utilized by Mead in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect, as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

(c) Many factors influenced Mead's decision in making a price determination, and in making such a decision, Mead exercised its own business judgment. A price believed to have been most recently charged or quoted by a competitor, when Mead believed it had sufficient basis for such belief, was only one of many factors influencing Mead's pricing decision.

(d) In many instances, depending upon particular circumstances, Mead would quote lower or higher prices than that indicated by its information as to the most recent price charged the customer, from whatever source the information was obtained; and in all instances the determination as to the price to be charged or quoted was Mead's individual decision.

190. On those occasions prior to 1961, and thereafter, under the circumstances set forth in Findings 186 and 187, when competitors requested price information, Mead usually furnished price information to that competitor, and hoped that doing so would prompt that competitor to furnish price information to Mead on those subsequent occasions when Mead considered it necessary to request price information.

191. During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

192. Mead's price trends differed from those of each of its competitors, and there is no parallel between them.

193. Mead's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

194. Mead's prices also varied from month to month throughout the period covered by the Complaint.

195. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Mead exercised its own business judgment.

XVIII. FINDINGS AS TO MILLER

196. Miller, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

197. On those occasions when Miller considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

198. When Miller received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

199. The extent and frequency with which such information was requested or furnished varied among Miller and the several other defendants.

200. In the circumstances set forth in Findings 197 through 199, Miller requested and/or furnished price

information from and/or to each of the other defendants, except St. Joe and St. Regis.

201. From time to time, Harold P. Kyle, as President of Miller, and William M. Noftsinger, as Vice-President and Sales Manager of Miller, gave and received said price information.

202. Miller requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Miller from other defendants was taken into account and utilized by Miller in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

203. When Miller furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

204. When Miller furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

205. In all instances, the determination as to the price to be charged or quoted by Miller was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Miller exercised its own business judgment.

206. Miller's price trends differed from those of each of its competitors, and there is no parallel between them.

XIX. FINDINGS AS TO OWENS-ILLINOIS

207. Owens-Illinois, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

208. On those occasions when Owens-Illinois considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

209. When Owens-Illinois received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

210. The extent and frequency with which such information was requested or furnished varied among Owens-Illinois and the several other defendants and among the plants and customers of Owens-Illinois.

211. In the circumstances set forth in Findings 208 through 210, Owens-Illinois requested and/or furnished price information from and/or to each of the other defendants.

212. There is no evidence that the price information furnished by Owens-Illinois related to prices quoted upon which an actual order had not at that time been received from the customer.

213. From time to time, from and after October,

1961, Thomas M. Cox, Jr., General Manager of the Southeastern Region of the Forest Products Division of Owens-Illinois, and from time to time, from and after the Spring of 1958, Kenneth E. Rosenbaum, for part of said time Sales Manager and later General Manager of the Salisbury, North Carolina, plant of Owens-Illinois, on occasion requested and furnished price information.

214. Owens-Illinois requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Owens-Illinois from other defendants was taken into account and utilized by Owens-Illinois in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

215. When Owens-Illinois furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

216. When Owens-Illinois furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

217. In all instances, the determination as to the price to be charged or quoted by Owens-Illinois was its individual decision. In deciding whether to seek a particular order from a particular customer, or wheth-

er to offer to sell a particular container, and in determining the price to be charged or quoted, Owens-Illinois exercised its own business judgment.

218. Owens-Illinois' price trends differed from those of each of its competitors, and there is no parallel between them.

219. Owens-Illinois' price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

220. Owens-Illinois' prices also varied from month to month throughout the period covered by the Complaint.

XX. FINDINGS AS TO ST. JOE

221. St. Joe, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Dixie, Dixie of North Carolina, and Miller, although not necessarily at all times or in all areas or for all purchasers.

222. On those occasions when St. Joe considered it necessary to ascertain the accuracy of a customer's report of a price charged by another defendant, or to ascertain from another defendant the most recent price charged to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

223. When St. Joe received a request from another defendant for the most recent price charged to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

224. St. Joe requested or furnished price information from or to other defendants infrequently.

225. In the circumstances set forth in Findings 222 through 224, St. Joe requested and/or furnished price

information from and/or to Container Corporation, Crown Zellerbach, Inland, Mead, Owens-Illinois, St. Regis, West Virginia, and Weyerhaeuser.

226. St. Joe neither furnished nor requested any price information, except a price charged the customer in an actual sale. No representative of St. Joe at any time requested from or furnished to any other defendant information as to prices in terms other than an end price or prices.

227. When St. Joe requested or furnished price information, it was done exclusively by telephone.

228. St. Joe would request price information from another defendant only after St. Joe had analyzed the business and determined that it was desirable from the standpoint of type of linerboard required, contribution to plant product mix, customer's credit standing, and other relevant factors. St. Joe then would not request price information from another defendant unless it did not have enough information itself to determine a price, had not received price information from a customer, and did not have its own past price record for that customer.

229. St. Joe requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by St. Joe from other defendants was taken into account and utilized by it in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

230. When St. Joe furnished another defendant, upon request, the most recent price charged to a spe-

cific customer, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant. When St. Joe furnished price information to another defendant, St. Joe had no assurance that it would be able to obtain similar price information if it requested it on another occasion.

231. St. Joe had no company policy as to furnishing or requesting price information to or from other defendants. The entire authority for pricing containers was left to its General Managers for its corrugated container plants at Port St. Joe, Florida, and Birmingham, Alabama. No one at its corporate headquarters in Jacksonville, Florida, had any responsibility for pricing specific customers, nor did they receive any reports from the General Managers showing any prices for specific customers.

232. When St. Joe furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

233. In all instances, the determination as to the price to be charged or quoted by St. Joe was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, St. Joe exercised its own business judgment.

234. St. Joe's price trends differed from those of each of its competitors, and there is no parallel between them.

235. St. Joe's price trends varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

236. St. Joe's prices also varied from month to month throughout the period covered by the Complaint.

XXI. FINDINGS AS TO ST. REGIS

237. St. Regis, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Albemarle, Dixie, Dixie of North Carolina and Miller, although not necessarily at all times or in all areas or for all purchasers.

238. On the occasions when St. Regis considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

239. When St. Regis received a request from another defendant for the most recent price to a specific customer for corrugated containers, such information was sometimes, but not always, furnished.

240. The extent and frequency with which such information was requested or furnished varied among St. Regis and the several other defendants and among plants and customers of St. Regis.

241. In the circumstances set forth in Findings 237 through 240, St. Regis requested and/or furnished price information from and/or to each of the defendants, except Albemarle, Dixie, Dixie of North Carolina, and Miller.

242. The price information requested or furnished by St. Regis related to prices charged customers in completed sales in which the customer had been billed.

243. From time to time, from and after October 1958, W. L. Diggs, as Southern District Manager for St. Regis, requested or furnished price information as described in Finding 242.

244. Price information received by St. Regis' officers or employees from other defendants was given consideration in determining the prices to be charged or quoted by St. Regis in the same manner, and with the same effect, as price information received from customers, provided the price information received from customers was considered reliable.

245. When St. Regis furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

246. In all instances, the determination as to the price to be charged or quoted by St. Regis was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, St. Regis exercised its own business judgment.

247. St. Regis' price trends differed from those of each of its competitors, and there is no parallel between them.

248. St. Regis' price trends varied from plant to plant, for 1955-1963, as shown by comparing the price trends of its plants.

249. St. Regis' prices also varied from month to month throughout the period covered by the Complaint.

XXII. FINDINGS AS TO TRI-STATE

250. Tri-State, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers.

251. On those occasions when Tri-State considered it necessary to ascertain the accuracy of a customer's

report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

252. When Tri-State received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and the information furnished was accurate.

253. In the circumstances set forth in Findings 251 and 252, Tri-State requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

254. From time to time, during the period covered by the Complaint, Alan McDonald, Sales Manager for Tri-State, requested and furnished said price information.

255. The price information requested and/or furnished by Tri-State related to consummated sales.

256. Price information received by Tri-State from other defendants was taken into account by Tri-State in individually determining the prices to be charged or quoted by it in the same manner, and with the same effect, as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

257. When Tri-State furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

258. In all instances, the determination as to the price to be charged or quoted by Tri-State was its

individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Tri-State exercised its own business judgment.

259. Tri-State's price trends differed from those of each of its competitors, and there is no parallel between them.

260. Tri-State was cognizant of the existence of the consent decree referred to in Findings 39 through 44 hereof, and relied upon the terms thereof.

XXIII. FINDINGS AS TO UNION-CAMP

261. Union-Camp, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

262. On those occasions when Union-Camp considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. However, during the period from July 16, 1963, to October 10, 1963 (during which period Union-Camp was making a general increase in prices to its customers), Union-Camp neither requested nor furnished such price information.

263. When Union-Camp received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

264. The extent and frequency with which such in-

formation was requested or furnished varied among Union-Camp and the several other defendants and among the plants and customers of Union-Camp. Union-Camp, at its Spartanburg plant, received four or five requests per week.

265. In the circumstances set forth in Findings 261 through 264, Union-Camp requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

266. The price information furnished by Union-Camp was the price at which it had sold or quoted to a specific customer. The plant managers of Union-Camp were authorized to give such price information at the request of a competitor.

267. During the time when Union-Camp furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

268. The price information received by Union-Camp from other defendants was taken into account by Union-Camp in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

269. Lewis A. Wulff, from time to time, from and after July 1, 1963, until July 10, 1963, and from October 10, 1963, until October 14, 1963, as Southeastern Regional Sales Manager for Union-Camp; Frank B. Grimes, from January 1, 1960, until July 16, 1963, as Sales Manager of the Spartanburg, South Carolina, plant of Union-Camp; John I. Pritchett, during part or all of the period from December 1, 1959, until July 16, 1963, as an employee of Union-Camp, and J. E.

Faulkner, Jr., from December 1, 1959, until July 16, 1963, as Sales Manager of the Jamestown plant of Union-Camp, requested and furnished said price information.

270. When Grimes, and the other Union-Camp plant managers referred to in Finding 269, furnished most recent price information to a competitor, they were following a Union-Camp policy which permitted its plant managers to give this information in the hope that, when they needed it, the competitor, in turn, would furnish such information. Grimes believed he could not expect to receive such information unless he gave it. In addition, by furnishing such information to another defendant, Union-Camp knew the source of some of the competition it would meet for a particular piece of business.

271. Union-Camp requested most recent price information to enable it to determine whether, in a particular account and at a particular time, it wanted to meet a competitor's price, quote higher, or quote lower.

272. In all instances, the determination as to the price to be charged or quoted by Union-Camp was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Union-Camp exercised its own business judgment.

273. Union-Camp's price trends differed from those of each of its competitors, and there is no parallel between them.

XXIV. FINDINGS AS TO WEST VIRGINIA

274. West Virginia, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

275. On those occasions when West Virginia considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

276. When West Virginia received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

277. The extent and frequency with which such information was requested or furnished varied among West Virginia and the several other defendants and among the plants and customers of West Virginia.

278. In the circumstances set forth in Findings 275 through 277, West Virginia requested and/or furnished price information from and/or to each of the other defendants.

279. The price information requested and/or furnished by West Virginia related to prices charged customers in actual sales, or to prices quoted upon which an actual order had not at that time been received from the customer.

280. From time to time, during the period covered by the Complaint, David B. Orcutt, Jr., Richmond District Sales Manager of West Virginia, requested and furnished price information. From time to time, from and after November, 1959, Joseph T. Piemonte, Sales Manager of the Richmond Region of West Virginia, furnished to three competitors information relating to prices charged customers in completed sales only, but he did not request any price information from others.

281. West Virginia requested price information

from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by West Virginia from other defendants was taken into account by West Virginia in individually determining the prices to be charged or quoted by it in the same manner, and with the same effect, as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

282. When West Virginia furnished another defendant, upon the latter's request, price information, it did so hoping that such information would be given to it on those occasions when it might want such information.

283. When West Virginia furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

284. In all instances, the determination as to the price to be charged or quoted by West Virginia was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, West Virginia exercised its own business judgment.

285. West Virginia's price trends differed from those of each of its competitors, and there is no parallel between them.

286. West Virginia's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

287. West Virginia's prices also varied from month to month throughout the period covered by the Complaint.

XXV. FINDINGS AS TO WEYERHAEUSER

288. Weyerhaeuser, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

289. On those occasions when Weyerhaeuser considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

290. When Weyerhaeuser received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

291. The extent and frequency with which such information was requested or furnished varied among Weyerhaeuser and the several other defendants and among the plants and customers of Weyerhaeuser.

292. In the circumstances set forth in Findings 289 through 291, Weyerhaeuser requested and/or furnished price information from and/or to each of the other defendants.

293. The price information requested and/or furnished by Weyerhaeuser related to prices charged customers in actual sales.

294. From time to time, from and after the middle of August 1961, to October 13, 1963, George W. Elliott, Jr., Sales Manager of the Charlotte Plant of Weyerhaeuser, and from time to time, from and after June 1962, to October 13, 1963, Ivan D. Wood, Vice-President and Manager of the Shipping Container

Division of Weyerhaeuser, on occasion requested and furnished said price information.

295. Weyerhaeuser requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Weyerhaeuser from other defendants was taken into account and utilized by Weyerhaeuser in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

296. When an employee of Weyerhaeuser made his individual decision to furnish another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, he did so believing that it was unlikely that he could obtain price information from such other defendant, on those occasions when he might consider it necessary to request such information, unless he furnished price information when requested by such other defendant.

297. When Weyerhaeuser furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only, pursuant to its own specific request.

298. In all instances, the determination as to the price to be charged or quoted by Weyerhaeuser was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Weyerhaeuser exercised its own business judgment.

299. Weyerhaeuser's price trends differed from those of each of its competitors, and there is no parallel between them.

300. Weyerhaeuser's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

301. Weyerhaeuser's prices also varied from month to month throughout the period covered by the Complaint:

XXVI. FINDINGS WITH RESPECT TO "OTHER CONDUCT" OF VARIOUS DEFENDANTS

302. In 1955, there was a meeting at the Plaza Hotel in New York, New York, at which representatives of defendant Dixie and of other non-defendant corrugated container manufacturers were present. Anthony J. Bagley, then President of Richmond Container Company (which was acquired by defendant Albemarle four years later), announced that his Company would increase its prices to American Tobacco Company. After the meeting, Bagley increased his prices to American Tobacco Company, but no one else did, and Bagley thereafter withdrew his price increase. Bagley testified that for all intents and purposes the people who attended the meeting could have stayed home.

303. Early in 1956, corrugated container manufacturers from the Baltimore area solicited business in the eastern part of Virginia for the manufacture and sale of corrugated containers at prices which in general were lower than the prices which corrugated container users in the eastern part of Virginia were then paying for similar corrugated containers. Miller, Dixie, Robert Gair Company, prior to its acquisition by Continental, Richmond Container Corporation, prior to its acquisition by Albemarle, and possibly

West Virginia, endeavored to ascertain the localities in eastern Virginia in which the aforesaid Baltimore manufacturers were active, so that each could identify geographically the area in which it would be necessary to lower corrugated container prices to meet the competition of Baltimore manufacturers. These matters were discussed by telephone and at a meeting. Thereafter, in early 1956, Miller and Richmond Container Corporation (subsequently merged into Albemarle) each adopted lower nominal board factors for eastern Virginia than for western Virginia.

304. Prior to July 1, 1959, each defendant included in its prices to many of its customers a set-up charge. (Finding 49) of \$15.00 for regular slotted cartons. Thereafter, and continuing into 1960, each defendant sought to increase its set-up charge for such cartons by \$10.00 to many of its customers. By July 1960, each defendant included in its prices to many of its customers a set-up charge of \$25.00 for regular slotted cartons. However, throughout such period, the amount of such set-up charges varied among the several defendants and among the plants and customers of individual defendants, and in many instances the amount of set-up charge sought or received, if any, was less than the aforesaid amounts.

305. In or about May or June 1959, there was a meeting at the Sir Walter Raleigh Hotel in Raleigh, North Carolina, for a period of some 20 to 30 minutes, at which representatives of Container Corporation, Dixie, Crown Zellerbach and Owens-Illinois were present. Either John I. Pritchett or J. E. Faulkner, Jr., of Highland Container Corporation (a company which then had been partially acquired by Union-Camp in March 1959, and later fully acquired in September 1959, and merged into Union-Camp in December 1959), upon entering the meeting, announced that

their company was increasing its set-up charge from \$15.00 to \$25.00 and thereupon left the meeting.

306. On July 29, 1959, there was a meeting at Dimizzio's Restaurant in Salisbury, North Carolina, at which representatives of Carolina, Continental, Crown Zellerbach, Container Corporation, Dixie, Dixie of North Carolina, Mead, Miller and Owens-Illinois were present, and at which some of them exchanged views as to how the trade had accepted an increase in set-up charges.

307. The representative of Owen-Illinois present at the meetings at the Sir Walter Hotel and Dimizzio's Restaurant was Kenneth E. Rosenbaum.

308. The representative of Crown Zellerbach present at the meetings at the Sir Walter Hotel and at Dimizzio's Restaurant was Gordon M. Clark.

309. The representative of Container Corporation present at the meeting at Dimizzio's Restaurant was Adolphus S. Clay; the representative of Miller present was William M. Noftsinger, and the representative of Carolina present was Carter Holbrook.

310. Joseph Schwind, Sales Manager for Dixie of North Carolina, attended the meeting at Dimizzio's Restaurant. At that time he had just started as Sales Manager in Morganton, North Carolina (home office of Dixie of North Carolina), and his purpose in going was to meet his competitors. H. L. Mitchell, President of Dixie, also attended the meeting at Dimizzio's Restaurant. His primary purpose in attending was to bring Schwind and introduce him to as many of his competitors as possible.

311. H. L. Mitchell, President of Dixie, immediately after a Fibre Box Association meeting, in a conversation with Anthony J. Bagley, representing Richmond Container, suggested that Richmond Container raise its prices to Burlington Industries.

313. Prior to July 27, 1961, Inland and Crown Zellerbach, among others, had announced general increases in their respective prices for corrugated containers in varying amounts, effective on varying dates. Subsequent to these public announcements, a regularly scheduled meeting of Zones 10 and 11 of the Fibre Box Association was held on July 27, 1961, at which legal counsel was present. On July 31, 1961, Lee J. Ross, then manager of the Atlantic plant of Crown Zellerbach, wrote an inter-office memorandum to his superior in that company as follows:

As outlined in your conversation of last Friday morning, the following information was given to Paul Claus in San Francisco:

As per my letter to you of July 26, the statement as outlined was read by me to the Fibre Box Association. Inland Container also made a statement advising that there was a letter in the mail to their customers that prices would be increased a minimum of 10% on August 15.

During the meeting a phone call was received from Bill Diggs of St. Regis, and he stated that he felt his company would also support this advance in prices. No other comment was made by the representatives in attendance.

The following companies were represented:

Inland Container	Union Bag
Dixie Container	Maxwell Bros.
Mead	H.&D.
Mengel	Weyerhaeuser
Continental Can	International Paper

Not in attendance:

Owen-Illinois	Container Corp.
Carolina Container	St. Regis
Tri-State	Mead-Atlanta

We held a sales meeting today in Atlanta of the Atlanta sales personnel, and the price increase procedure was outlined in full.

312. In August 1959, a meeting of representatives of some corrugated container manufacturers was held at the Raleigh Hotel in Richmond, Virginia. David B. Orcutt, West Virginia's District Sales Manager for the Richmond District, invited to the meeting a representative of each manufacturer that he believed was then supplying corrugated containers to Hygrade Packing Corporation. In response, representatives of Continental, Dixie, Miller, and Richmond Container Corporation, which companies, with the exception of Continental, were then supplying corrugated containers to Hygrade, met at the Raleigh Hotel, as aforesaid. Sometime previously, West Virginia had publicly announced a general increase in its corrugated container prices of approximately 10%. Some of Hygrade's suppliers named had been advised by Hygrade that West Virginia had reduced its prices to Hygrade, and had inquired of West Virginia as to whether that report was correct in view of West Virginia's previously announced price increase policy. The meeting was called to answer these inquiries at one time. At this meeting, Mr. Piemonte, of West Virginia, explained to those present that West Virginia had not changed its previously announced general policy, but that when it had negotiated with Hygrade, it was West Virginia's good judgment that its price to that customer should be reduced 5%. No statement was made at the meeting as to what any other suppliers of corrugated containers to that customer intended to do.

314. In 1960 or 1961, A. S. Clay, of Container Corporation, was told by the purchasing agent at the Drexel Furniture Company that Drexel had been charged prices by other suppliers which were lower than prices charged by Container Corporation. Clay requested and received from competitors information

as to the prices charged Drexel, which differed from information which Clay had received from Drexel. Subsequently, Clay asked employees of Tri-State, Owens-Illinois, and he believes International, if they had recently reduced prices to Drexel, and Alan McDonald of Tri-State said that he had reduced his prices to Drexel by roughly 3%. Because of this price competition, Clay had lost a great deal of his business in this account. Clay expressed his intention to place his prices in a competitive position based on information given him by the purchasing agent. Subsequently, Clay reduced his prices to Drexel 5%.

315. On August 8, 1961, Robert Groner, Jr., then Regional Sales Manager of the Southern District for Continental, advised Continental's district sales managers, including Continental's New Orleans Sales Manager, that lists containing the names of customers notified of a general 10% price increase "should be compiled and should be circularized fully, since this can be made public information." On August 11, 1961, David J. Bloom, a sales manager for Mead at its Atlanta, Georgia, plant, received from Continental's New Orleans sales office such a list. Bloom had not requested the list.

316. In or about February 1962, H. L. Mitchell of Dixie and representatives of Miller, Albemarle, Continental and West Virginia met in Mitchell's office, at the latter's invitation, after the paper mills had announced a price increase for linerboard, the basic raw material for corrugated containers. Mitchell assumes he made inquiry as to whether the others had increased, or were increasing, their prices to recover these increased costs. Prior to the meeting, Continental had increased its container prices and had announced that fact to its customers, and Continental's representative at the meeting so stated. Also, prior to the

meeting, West Virginia had made the decision to attempt to increase prices of containers to recover such increased cost, and its representative so stated at the meeting. "The meeting broke up as if it had not started." At about this same time, the other defendants attempted to increase prices in varying amounts to some corrugated container customers in an effort to recover their increased costs of linerboard.

317. H. L. Mitchell of Dixie believed that after some competitors had discontinued giving and receiving the most recent price charged or quoted to specific customers, the prices of corrugated containers, in some instances, deteriorated 40 per cent simply for lack of communication.

318. David B. Orcutt, Jr., was the representative of West Virginia who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Prior to the meeting, West Virginia had decided to attempt to increase its prices sufficiently to recover the increased cost of linerboard, as previously announced by the linerboard mills, and Orcutt stated at the meeting that West Virginia personnel had been instructed to do so. Orcutt did not know whether the other defendants whose representatives attended the meeting attempted to increase their prices.

319. Robert Groner, Jr., and Jehan B. Johnson were the representatives of Continental who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Prior to the meeting, Continental had publicly announced an increase in prices of its corrugated containers in order to absorb the increased cost represented by the rise in the price of linerboard. Since Continental's price increase could not hold if its competitors did not increase their prices, Johnson was interested in knowing what his competitors were doing or had been doing.

320. Harold P. Kyle and William M. Noftsinger were the representatives of Miller who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Kyle's purpose in attending the meeting was to learn his competitor's attitude toward passing on to customers the increase in the cost of linerboard.

321. Robert Groner, Jr., representative of Continental, on or about June 30, 1961, at a meeting of the Fibre Box Association attended by one or more of the other defendants and the Fibre Box Association's counsel, delivered a speech in which he stated Continental's intention to abide by the antitrust laws. Groner announced certain of Continental's sales policies, and stated that Continental would attempt to sell its product at a profit. He noted that one of the causes of unprofitable pricing was the deception practiced on salesmen by purchasing agents when those purchasing agents were asked the price which they were currently paying for corrugated containers. He said that, in view of this deception, his company would endeavor to determine the most recent price charged to a new customer before quoting blindly. Groner's speech made no reference to specific customers. Groner said that "anyone who has any real or imaginary problems with our firm can call me," and stated that such conversations would be "strickly [sic] legal according to the interpretation of the law by Malcolm White [Whyte]," the General Counsel of the Fibre Box Association.

322. Anthony J. Bagley met with competitors in the office of Herbert Mitchell, President of Dixie, on at least three occasions and discussed the price level of corrugated containers in the Richmond, Virginia, area. There is no evidence when these meetings occurred nor that any other defendant was present.

323. On various dates between July 24, 1961, and August 31, 1961, Continental, Container Corporation, Crown Zellerbach, Mead, Owens-Illinois, Union-Camp and West Virginia publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on September 1, 1961, and Inland and St. Regis publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on August 15, 1961. Each of the defendants attempted to increase its prices to the majority of its corrugated container customers, and succeeded in increasing prices to some of its customers in varying amounts. Continental had publicly announced its price increase prior to August 11, 1961. On August 24, 1961, Robert Groner, Jr., attended a Fibre Box Association meeting at which one or more of the defendants were present. Groner, who had a duty to gather market information for Continental, reported to his superior that "the feeling at this meeting was that the price increase . . . would probably hold." Groner instructed his district sales managers to make no deviations from Continental's previously announced increase without specific permission.

324. On one occasion, when Container Corporation received from Continental the most recent price which Continental had charged to a specific customer, Container Corporation analyzed Continental's price against Container Corporation's costs, determined that Container Corporation could charge less and still have a comfortable profit, and cut Continental's price. An employee of Continental complained to an employee of Container Corporation, but Continental continued giving price information to Container Corporation when such information was requested.

325. After a zone meeting of the Fibre Box As-

sociation, Barnell E. Roberts, Sales Manager of Inland's Macon, Georgia, plant, stated in the presence of several representatives of other defendants that he was going to increase his prices to Spring Cotton Mills. Roberts said nothing further. Roberts had not decided to make this announcement prior to making it. No comment was made by any of the others present regarding the announcement. Roberts sought no agreement, and stated that he would make no agreement. He expected that the others would not increase their prices. They did not. Inland did and lost the business. Later Inland reduced its prices to get back into the account.

326. In or about 1961, Weyerhaeuser, at the request of Continental, furnished Continental the most recent price that Weyerhaeuser had charged a certain account. After obtaining this information, Continental quoted a more attractive price to this account and took the business from Weyerhaeuser. Weyerhaeuser naturally was unhappy that it no longer had the business. Subsequently, upon inquiry from Weyerhaeuser, Continental confirmed that it had taken the account at a lower price. Weyerhaeuser thereafter attempted to regain the account.

DISCUSSION

The issues for determination are whether, from the facts found, (1) the defendants, during the period covered by the Complaint, had an understanding or agreement to exchange information as to the most recent prices charged or quoted to specific customers, and (2) if so, during said period, did the defendants have a further understanding and agreement to use such exchanged price information for the purpose and with the effect of maintaining substantially identical price quotations to specific customers or minimizing the

amount of any price reductions to be offered to such customers. It is the contention of the plaintiff, if these two issues are resolved in the affirmative, that the concerted and reciprocal conduct of the defendants constitutes, as a matter of law, a combination or conspiracy in the restraint of trade in the sale of corrugated containers within the meaning of Section 1 of the Sherman Act.¹ If an unlawful trade conspiracy has otherwise been established, a further question is presented as to whether the provisions of the consent decree entered in the case of "United States of America, Plaintiff, against National Container Association, et al., Defendants," in the United States District Court for the Southern District of New York, Civil Action No. 8-318, constitutes a defense available to any of the defendants.

The plaintiff concedes that there is no evidence of an express agreement or understanding between or among any of the defendants to either exchange price information or to restrict price competition. It is contended, however, that, from the facts found, the Court may infer an agreement to exchange information as to the price most recently quoted or charged for corrugated containers, and that from such agreement, together with such facts, the Court may infer an agreement to restrict price competition. Since it is well established that a conspiracy can be inferred or implied from a concerted and collaborative course of action, plaintiff correctly asserts that an explicit agreement is not a necessary part of a Sherman Act

¹ Section 1 of the Sherman Act, 15 U.S.C. § 1, provides, in pertinent part, as follows:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal . . ."

conspiracy. *United States v. General Motors*, 384 U.S. 127 (1966).

Unquestionably, during all or a part of the period covered by the Complaint, each of the defendants furnished to other defendants, upon request, the most recent price charged or quoted to specific customers for corrugated containers, and this was done with the implied understanding that by furnishing such information each defendant would, upon request, receive similar information. The evidence also permits the inference that each of the defendants knew that this practice was engaged in to some extent by other defendants. Since each defendant gave price information to other defendants with the expectation that the same kind of information would be furnished by the competitor, reciprocally, when requested, the plaintiff contends that a combination and conspiracy has been proved. The defendants, on the other hand, earnestly contend that the uncontested facts negate any inference of an agreement.

The Court is of the opinion that the plaintiff has failed to sustain its burden of proving facts from which an agreement to exchange price information may be inferred. Before determining the price to be quoted to a specific purchaser for corrugated containers, each defendant was naturally interested in all pertinent marketing information applicable to such account, and it was important to each manufacturer to have accurate information as to the price alternatives available to the purchaser. Usually, such information was obtained from the defendants' own records of prior sales, or from the purchaser involved. However, on occasions, purchasers furnished manufacturers with incomplete, inaccurate or misleading information as to prices offered by competing suppliers, and it was only on these occasions that a

competitor was consulted with respect to price information. The extent and frequency with which such information was requested or furnished varied among the plants and customers of each of the defendants. The defendants were at all times free to request from or furnish to competitors, or not request from or furnish to competitors, information as to prices for corrugated containers, and whether or not to request or furnish such information was the individual decision of each defendant. At various times during the period covered by the Complaint, some of the defendants discontinued the practice altogether. Price information was furnished only in response to a specific request therefor, and was never volunteered. The price communication among the defendants was infrequent, since the usual means for obtaining such information was from a defendant's own records or from a customer. The undisputed fact that each defendant "usually" furnished price information on request disproves any agreed requirement that such information would always be furnished. There was a lack of uniformity in the substance and scope of price information furnished. Sometimes it was furnished in terms of end prices, and sometimes in terms of board levels. Some defendants furnished it both ways, while others furnished it in terms of an end price only. Some defendants furnished only a price which had been charged to a customer in a consummated sale, while others made no distinction between consummated sales and prices previously quoted.

The conceded freedom of each defendant to request from or furnish to competitors, or not request from or furnish to competitors, price information on corrugated containers, is the very antithesis of an agreement. Proof of a course of conduct by the defendants, or parallel business behavior, does not necessarily

require an inference or conclusion that a conspiracy actually existed. *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537 (1954). The most that can be said about the conduct of the defendants in exchanging price information is that on *infrequent* occasions each of the defendants, during various periods, felt free to call upon competitors to *verify* price information given by purchasers, and by receiving such information, felt compelled to give similar information upon request. Since this was done with no regularity, and each defendant was at all times completely free to either furnish or not furnish such information, it cannot be said that the existence of any agreement or conspiracy should be inferred.

Even if the mere giving and receiving of price information could support an inference of an agreement or conspiracy to do so, this alone would not be a violation of the Sherman Act. The plaintiff concedes that if it had only charged in the Complaint that the defendants had agreed to exchange price information, it would have no case, and that the Complaint would be subject to dismissal. Thus, the plaintiff has the additional burden of showing that from such inferred agreement, the Court should further infer that there was an agreement to use such exchanged price information for the purpose and with the effect of maintaining substantially identical price quotations to specific customers, or minimizing the amounts of any price reductions to be offered to such customers.

In arguing that a preponderance of the evidence establishes that the defendants combined and conspired to exchange most recent prices charged or quoted to specific customers for the purpose and with the effect of maintaining identical price quotations to those customers, or minimizing the amount of any re-

duction in price to be offered, plaintiff points to the stipulated evidence that each defendant considered it beneficial to have the most recent prices charged or quoted to specific customers for corrugated containers by its competitors; that the price information thus obtained was utilized in making the determination as to what price would be quoted to the customer; that one of the defendants felt that such price information was important to the defendants to keep the market stable; that most defendants felt that such price information was needed to maintain prices and minimize any price competition that might otherwise exist; that some defendants hinted that the price information was used to get the best possible prices from their customers, and other evidence of similar import. The plaintiff also contends that the asserted freedom by recipients of price information to use their own discretion in setting prices is meaningless for the reason that a decision to quote a price other than identical, or marginally under, the price of the competitor, would be wholly irrational, if the recipient was interested in sharing the business. Plaintiff further asserts that if the direct evidence does not establish that the practice of the defendants in exchanging most recent prices charged or quoted to specific customers had the purpose and necessary effect of stabilizing prices and minimizing competition among defendants, the "other conduct" evidence relating to various defendants (Findings 302 through 326) makes such conclusion inescapable. It is not contended, however, that this "other conduct" evidence establishes a separate violation of the antitrust laws.

The record is barren of any evidence that any of the defendants were ever committed to a common scheme in fixing prices to be charged or quoted a customer. On the contrary, it is conceded that the

corrugated container business was highly competitive, and that each defendant, in deciding whether to seek a particular order from a particular customer, and in determining the price to be charged or quoted, exercised its own business judgment. Purchasers frequently shifted their business from one supplier to another. Each defendant was constantly losing old accounts and acquiring new ones. Defendants' business records indicate independent and unrestricted price competition. Many factors other than the latest price quoted or charged entered into individual decisions as to whether to seek a particular order from a particular customer, and in determining the price to be quoted (Findings 22 and 23).

Plaintiff does not challenge the right of the defendants to obtain and use reliable market information for the purpose of maximizing sales and profits, but argues that cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices is to impose an undue restraint upon free competition protected by the Sherman Act. However, this argument does not take into account the fact that, while engaged in such "cooperative and reciprocal action," each defendant exercised its own business judgment with respect to the desirability of an order from a particular customer, or the fact that the price to be quoted, whether higher, lower, or the same, was the individual decision of each defendant. There is no evidence that any defendant ever discussed with any other defendant the desirability, the frequency, or the consequences of requesting or furnishing, or failing to request or furnish, price information, or the action to be taken with respect to such information. This freedom of action reserved by each defendant completely refutes the charge that it was the common purpose of the defendants, in exchange-

ing price information, to maintain prices which would be substantially identical with the prices of another, to minimize price reductions, or otherwise make concerted use of any price information after it had been obtained. The exchange of most recent price information is not illegal merely because it enables the recipient to compete on the basis of fuller market information, so long as each competitor, although taking into account the price information received from a competitor, independently established its own price.

Neither has the plaintiff proved its charge that the exchange of most recent price information had the effect of maintaining substantially identical price quotations to specific customers, or minimizing the amount of any price reductions to be offered to such customers. No evidence was adduced by the plaintiff from any corrugated container customer in the Southeastern United States showing, or in any way indicating, that prices charged by any one or more of the defendants was stabilized or harmonized by the exchange of price information, or indicated any uniformity or parallelism of prices between or among two or more of the defendants. Actually, the uncontested statistical data in the record demonstrates the absence of any uniformity, harmony, stability or parallelism in prices. Price trends varied widely among the several defendants and among the plants of the individual defendants, both as to direction and as to degree. While the price trends of some plants were moving upward, those of other plants were moving downward. It has been stipulated that during the period covered by the Complaint, the price trend of all corrugated containers was downward, and was substantially the same at the end of the period as at the beginning thereof, in contrast to the increase in prices for the same period for paper and allied products

generally. Further, during the same period, labor rates, machinery and equipment costs, and other production costs, for both corrugated containers and containerboard, increased. Another important factor is that the price information received from other defendants was taken into account and utilized by each defendant in individually determining the price to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. Consequently, if purchasers had always given accurate and reliable information, there would have been no necessity for calling upon a competitor for verification, and the price structure in the corrugated container business would have been the same as if no price information had ever been exchanged with competitors. It is difficult to understand how the infrequent exchange of price information between competitors for verification purposes could constitute an unlawful conspiracy in restraint of trade when the identical price structure would have been maintained, free of any illegality, had customers been accurate and reliable in reporting the same information. In all instances, the price information, from whatever source, merely permitted the recipient to make its independent pricing decision based on this and numerous other factors. The gathering of price information, from whatever source, which enables "sellers to prevent the perpetration of fraud upon them, which information they are free to act upon or not act as they choose, cannot be held to be an unlawful restraint upon commerce . . ." *Cement Manufacturers Protective Ass'n. v. United States*, 268 U.S. 588, 603, 604 (1925).

In support of its claim that proof of an unlawful conspiracy has been established, plaintiff relies prin-

cipally upon *American Column and Lumber Co. v. United States*, 257 U.S. 377 (1921) and *United States v. American Linseed Oil Co.*, 262 U.S. 371 (1923). The defendants contend that the facts in this case more nearly resemble the facts in *Maple Flooring Assn. v. United States*, 268 U.S. 563 (1925) and *Cement Mfrs. Assn. v. United States*, 268 U.S. 588 (1925), and that these decisions should be controlling. We must, of course, "in considering the application of the rule of decision in these cases to the situation presented by this record," bear in mind that "each case arising under the Sherman Act must be determined by the particular facts disclosed by the record," and that prior opinions in such cases "must be read in light of their facts and of a clear recognition of the essential differences in the facts of those cases, and in the facts of any new case to which the rule of earlier decisions is to be applied." *Maple Flooring Assn. v. United States, Supra*, at 579.

In *American Column*, the defendant Association adopted a plan which required each member to make the following six reports to the Secretary:

1. A *daily* report of all sales actually made, with the name and address of the purchaser, the kind, grade and quality of lumber sold and all special agreements of every kind, verbal or written with respect thereto. "These reports are to be exact copies of orders taken."

2. A *daily* shipping report, with exact copies of the invoices, all special agreements as to terms, grades, etc. The classification shall be the same as with sales.

3. A *monthly* production report, showing the production of the member reporting during the previous month, with the grades and thickness classified as prescribed in the 'Plan.'

4. A *monthly* stock report by each member, showing the stock on hand on the first day of

the month, sold and unsold, green and dry, with the total of each kind, grade and thickness.

5. Price-lists. Members must file at the beginning of each month price-lists showing prices f.o.b. shipping point, which shall be stated. New prices must be filed with the association as soon as made.

6. Inspection reports. These reports are to be made to the association by a service of its own, established for the purpose of checking up grades of the various members and the "Plan" provides for a chief inspector and sufficient assistants to inspect the stocks of all members from to time. (257 U.S. at 394, 395).

All the reports by members were "subject to complete audit by representatives of the association," and any member who failed to report was not to "receive the report of the secretary," and "failure to report for twelve days in six months" caused the member "to be dropped from membership." The Secretary was required to send to each member a "monthly summary showing the production of each member for the previous month," a "weekly report . . . on all sales . . . giving each sale and the price, and the name of the purchaser," and "a monthly report, showing the individual stock on hand of each member and a summary of all stocks, . . . sold and unsold." Additionally, not later than the 10th of each month the Secretary was required to "send a summary of the price-lists furnished by members, showing the prices asked by each. . . ." Membership meetings were held once a month for the purpose of affording "opportunity for the discussion of all subjects of interest to the members." (257 U.S. at 395, 396, 397).

The record disclosed a concerted, systematic effort, directed by the Secretary and participated in by members of the Association, to cut down production and increase prices. While the plan was in effect,

"the prices of the grades of hardwood in most general use were increased to an unprecedented extent. . . ." For example, in one year, "the increases in prices of varieties of oak [ranged] from 33.3% to 296%"; gum increases ranged from "60% to 343%," and ash increases ranged from "55% to 181%." (257 U.S. at 409). The court is holding this concerted effort was unlawful, said:

Genuine competitors do not make daily, weekly and monthly reports of the minutest details of their business to their rivals, as the defendants did; they do not contract, as was done here, to submit their books to the discretionary audit and their stocks to the discretionary inspection of their rivals for the purpose of successfully competing with them; and they do not submit the details of their business to the analysis of an expert, jointly employed, and obtain from him a "harmonized" estimate of the market as it is and as, in his specially and confidentially informed judgment, it promises to be. This is not the conduct of competitors but is so clearly that of men united in an agreement, express or implied, to act together and pursue a common purpose under a common guide that, if it did not stand confessed a combination to restrict production and increase prices in interstate commerce and as, therefore, a direct restraint upon that commerce, as we have seen that it is, that conclusion must inevitably have been inferred from the facts which were proved. (257 U.S. at 410).

The opinion of the court in *American Column* rests squarely on the proposition that the purpose and effect of the activities of the members "were to restrict competition and thereby restrain interstate commerce in the manufacture and sale of hardwood lumber by concerted action in curtailing production and in increasing prices. . . ." (257 U.S. at 412).

Obviously, the facts present in this case do not remotely resemble the facts in *American Column*. The defendants here were under no compulsion to give or receive price information, since each defendant was free at all times to do as he pleased in this regard. No defendant was privileged to audit the books of another defendant, nor to be furnished with other business details of their rivals. No fines or penalties were assessed for a failure or refusal to furnish price information, and there was no compulsion to *adhere* to the price requested or received. Price information was given and received on infrequent occasions, and related to only a small percentage of sales, as contrasted to disclosure of price information on all sales.

In *American Linseed Oil*, the other case relied upon by the plaintiff, twelve corporate defendants entered into an agreement, with provisions for financial forfeitures in the event of its violation, for the maintenance of a bureau to gather and distribute information among the members, including price list covering the production of members. Members agreed to furnish to the bureau a schedule of all prices and terms, and were required to report by telegraph all variations of prices, the names of prospective buyers, the point of shipment, the exact prices, terms and discounts, and other pertinent information relating to sales and prices. All such information was to be treated as confidential and concealed from buyers. The information thus gathered was made available to members through the statistical surveys by the bureau. It was provided that any subscriber who had offered his product to a prospective buyer who did not purchase should have the right to advise the bureau of the "unsuccessful offering or quotation," and to request the bureau "to bulletin all of its subscribers asking specific information regarding any quotation

or sale to such prospective buyer by any other subscribers. . . ." (262 U.S. at 385). Members were required to give the desired information. In holding that the plan, as operated by the defendants, constituted a violation of the Sherman Act, the court said:

The record discloses that defendants, large manufacturers and distributors—powerful factors in the trade—of commodities restricted by limited supplies of raw material (linseed), located at widely separated points and theretofore conducting independent enterprises along customary lines, suddenly became parties to an agreement which *took away their freedom of action* by requiring each to reveal to all the intimate details of its affairs. All subjected themselves to an autocratic Bureau, which became organizer and general manager, paid it large fees and deposited funds to insure their obedience. Each subscriber *agreed to furnish a schedule of prices and terms and adhere thereto*—unless more onerous ones were obtained—until prepared to give immediate notice of departure therefrom for relay by the Bureau. Each also agreed, under penalty of fine, to attend a monthly meeting and report upon matters of interest to be there discussed; to comply with all reasonable requirements of the Bureau; and to divulge no secrets.

With intimate knowledge of the affairs of other producers and obligated as stated, but proclaiming themselves competitors, the subscribers went forth to deal with widely separated and unorganized customers necessarily ignorant of the true conditions. Obviously they were not *bona fide* competitors; their claim in that regard is at war with common experience and hardly compatible with fair dealing. (262 U.S. at 389, 390). (Emphasis supplied).

Here again, the facts in *American Linseed Oil* are materially dissimilar to the facts in the case under

consideration. We have no agreement that took away "any freedom of action" of the defendants by requiring the furnishing of price schedules and terms, and adherence thereto; no agreement, under penalty of fine, to attend meetings and report upon matters of interest; and no agreement to comply with the requirements of any organization, or not to divulge any trade secrets. The opposite is true. As we have seen, each defendant was at all times free to exchange, or not to exchange, price information, and each price charged or quoted was the individual decision of each defendant.

Subsequent to the decision in *American Column and American Linseed Oil*, the Supreme Court, in *Maple Flooring Association v. United States*, 268 U.S. 563 (1925), and *Cement Mfrs. Ass'n. v. United States*, 268 U.S. 588 (1925), had occasions to again consider the legality of the dissemination of price information among competitors. In each of these cases, it was found that the conduct of the defendants did not have the purpose or effect of restraining trade.

In *Maple Flooring*, the corporate defendants organized a trade association for the purpose of (1) computing and distributing among the members "the average cost to association members of all dimensions and grades of flooring," (2) compiling and distributing among members "a booklet showing freight rates on flooring from Cadillac, Michigan, to and between five and six thousand points of shipment in the United States," (3) gathering statistics which were supplied, at frequent intervals, "by each member of the Association to the Secretary of the Association giving complete information as to the quantity and kind of flooring sold and prices received by the reporting members, and the amount of stock on hand, which

information [was] summarized by the Secretary and transmitted to the members without, however, revealing the identity of the members in connection with any specific information thus transmitted," and (4) "conducting meetings "at which the representatives of members congregate and discuss the industry and exchange views as to its problems." There was no "agreement agreeing among the members of the Association either affecting production, fixing prices or for price maintenance." Members were "left free to sell their products at any price they [chose] and to conduct their business as they [pleased]." Although the Government claimed that the activities of the defendants "resulted in the maintenance of practical uniformity of net delivered prices as between the several corporate defendants," there was no evidence "to establish such uniformity," or "that any substantial uniformity in price had in fact resulted from the activities of the Association. . . ." Neither was there any "direct proof that the activities of the Association had affected prices adversely to consumers." Further, the undisputed evidence disclosed "that the prices of members were fair and reasonable, and that they were usually lower than the prices of non-members. . . ." (268 U.S. at 566, 567, 568).

In rejecting the Government's argument that the necessary effect of the activities of the defendants was to "bring about a concerted effort on the part of members of the Association to maintain prices at levels having a close relation to the average cost of flooring reported to members," and such activities "should be enjoined regardless of [their] actual operation and effect so far as price maintenance [was] concerned," the court stated:

We do not conceive that the members of trade associations become such conspirators merely

because they gather and disseminate information, such as is here complained of, bearing on the business in which they are engaged and make use of it in the management and control of their individual businesses; nor do we think that the proper application of the principles of decision of *Eastern States Retail Lumber Association v. United States* or *American Column & Lumber Co. v. United States* or *United States v. American Linseed Oil Company* leads to any such result. The court held that the defendants in those cases were engaged in conspiracies against interstate trade and commerce because it was found that the character of the information which had been gathered and the use which was made of it led irresistibly to the conclusion that they had resulted, or would necessarily result, in a concerted effort of the defendants to curtail production or raise prices of commodities shipped in interstate commerce. The unlawfulness of the combination arose not from the fact that the defendants had effected a combination to gather and disseminate information, but from the fact that the court inferred from the peculiar circumstances of each case that concerted action had resulted, or would necessarily result, in tending arbitrarily to lessen production or increase prices.

Viewed in this light, can it be said in the present case, that the character of the information gathered by the defendants, or the use which is being made of it, leads to any necessary inference that the defendants either have made or will make any different or other use of it than would normally be made if like statistics were published in a trade journal or were published by the Department of Commerce, to which all the gathered statistics are made available? The cost of production, prompt information as to the cost of transportation, are legitimate subjects of enquiry and knowledge in any industry. So likewise is the production of

the commodity in that industry, the aggregate surplus stock, and the prices at which the commodity has actually been sold in the usual course of business. (268 U.S. at 584, 585).

Clearly, the information given and received by the defendants in this case was far more limited in scope, and with less frequency, than in *Maple Flooring*. Under such circumstances, together with the failure of the plaintiff to offer any proof that the communications actually restricted price competition, or that the exchanged price information was used differently from like information gathered from other sources, plaintiff's challenge to defendants' conduct must fail.

In *Cement Manufacturers*, decided the same day as *Maple Flooring*, the court held an Association of Cement Manufacturers, organized for the purpose of exchanging trade statistics, to be legal, since the evidence did not show that the arrangement had the purpose or effect of restricting trade. The avowed purpose for organizing the Association was to collect and disseminate *accurate* information "to protect each manufacturer against misrepresentation, deception, and imposition. . . ." The members were required to report to the Secretary of the Association "all specific job contracts," including "name and address of the purchaser," the "amount of cement required," and the "price and delivery point," which was in turn communicated to the other members. (268 U.S. at 591, 596).

In reversing the trial court, which held that the activities of the defendants tended to limit the amount of cement produced and distributed, and to produce uniformity in price, thus imposing a restraint of commerce, the court stated:

"From these various activities of the defendants, the Government deduces a purpose to control the price of cement, which it is charged was

to be accomplished by the control of the supply of cement on the market and by intimate association of the defendants in the exchange of information and a ready means of quoting a delivered price at any point. Cement was to be kept from the market by the use of the specific job contract accompanied by the systematic gathering and reporting of information with reference to the specific jobs and the amount of cement required for their completion. The two essential elements in the conspiracy to restrain commerce charged therefore are (a) the gathering and reporting of information which would enable individual members of the Association to avoid making deliveries of cement on specific job contracts which by the terms of the contracts they are not bound to deliver, and (b) *the gathering of information as to production, price of cement sold on specific job contracts and transportation costs, not differing essentially from similar information disseminated by the Maple Flooring Association which is the subject of the opinion in Maple Flooring Association v. United States, decided today, ante p. 563.*

That a combination existed for the purpose of gathering and distributing these two classes of information is not denied. That a consequence of the gathering and dissemination of information with respect to the specific job contracts was to afford to manufacturers of cement, opportunity and grounds for refusing deliveries of cement which the contractors were not entitled to call for,—and opportunity of which manufacturers were prompt to avail themselves—is also not open to dispute. We do not see, however, in the activity of the defendants with respect to specific job contracts any basis for the contention that they constitute an unlawful restraint of commerce. The Government does not rely on any agreement or understanding among members of the Association that members would either make use of the specific job contract, or that they

would refuse to deliver 'excess' cement under specific job contracts. *Members were left free to use this type of contract and to make such deliveries or not as they chose*, and the evidence already referred to shows that in 1920 padded specific job contracts were cut down something less than two-thirds of the total amount of the padding, as a result of the system of gathering and reporting this information. It may be assumed, however, if manufacturers take the precaution to draw their sales contracts in such form that they are not to be required to deliver cement not needed for the specific jobs described in these contracts, that they would, to a considerable extent, decline to make deliveries, upon receiving information showing that the deliveries claimed were not called for by the contracts. Unless the provisions in the contract are waived by the manufacturer, demand for and receipt of such deliveries by the contractor would be a fraud on the manufacturer; and, in our view, *the gathering and dissemination of information which will enable sellers to prevent the perpetration of fraud upon them, which information they are free to act upon or not as they choose, cannot be held to be an unlawful restraint upon commerce*, even though in the ordinary course of business most sellers would act on the information and refuse to make deliveries for which they were not legally bound. (268 U.S. at 602, 603, 604). (Emphasis supplied).

Similarly in this case, the evidence establishes that the communication of price information was often, if not exclusively, for the purpose of verifying information obtained from buyers, and that defendants were at all times free to use the information as they chose. Equally important, the rationale of *Cement Manufacturers* is inapplicable here as the evidence fails to show that price information obtained by any

defendant from a competitor had any effect on prices, except for its natural influence on individual action.

After a reading of all the cases, those cited by the plaintiff as well as those cited by the defendants, and comparing the facts in each case with the record in this case, the Court is led to the inescapable conclusion that no court has yet held communications of price information similar to those here at issue to be a violation of the Sherman Act. No express agreement to restrict price competition can be found in the record, and none can be inferred when every price decision by every defendant was its own individual decision, unrestricted by agreement. This is particularly true in view of the vigorous and continuous price competition of the defendants, and the admitted price structure in the corrugated container industry.

Little need be said about the other issues. The Government concedes that the activity of the Fibre Box Association is protected by *Maple Flooring*. The 1940 consent decree, even if relied upon by some or all of the defendants, is of little consequence. It does not legalize unlawful conduct. It simply permits the gathering and dissemination of information as to the cost of manufacture of corrugated containers, the actual price which the product has brought in past transactions, etc., so long as such activities are carried on without "reaching or attempting to reach any agreement or any concerted action with respect to price or production of such containers." The plaintiff concedes that an exchange of price information without an agreement to restrict price competition would be lawful, and the defendants admit that an exchange of such information, coupled with an agreement to restrict price competition, would be unlawful. In any event, since no agreement has been found to either exchange price information, maintain substantially

identical price quotations to specific customers, or to minimize the amount of any price reductions to be offered to such customers, the consent decree has no relevancy.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter.

2. The evidence in this case does not prove or support an inference that there was an agreement or understanding among the defendants, or any of them, to exchange, or furnish upon request, information as to the most recent price charged or quoted to specific customers for corrugated containers.

3. The evidence in this case does not prove or support an inference that there was an agreement or understanding among the defendants, or any of them, to exchange, or to furnish upon request, information as to the most recent price charged or quoted to specific customers for corrugated containers, for the purpose of maintaining substantially identical price quotations to specific customers or minimizing the amount of any price reductions to be offered to such customers.

4. The requesting and furnishing of price information by the defendants did not have the effect of eliminating, reducing, minimizing or restricting price competition.

5. The plaintiff is not entitled to the injunctive relief sought in the Complaint.

6. The defendants are entitled to a judgment dismissing the Complaint with prejudice.

A judgment will be entered accordingly.

EDWIN M. STANLEY,
United States District Judge.

AUGUST 31, 1967.

JUDGMENT

This cause came regularly on for trial before the Court without a jury, and was duly submitted for consideration and decision, and the Court, after due deliberation, having on the 31st day of August, 1967, filed herein its Findings of Fact and Conclusions of Law;

Now, therefore, pursuant to said Findings of Fact and Conclusions of Law filed herein, it is

Ordered, adjudged and decreed that the injunctive relief sought by the plaintiff be, and same hereby is, denied, and that the Complaint be, and same hereby is, dismissed with prejudice.

It is further ordered that each party bear its own costs.

EDWIN M. STANLEY,
United States District Judge.

AUGUST 31, 1967.

POST-TRIAL BRIEF FOR THE UNITED STATES

As used in this brief, "exchange of most recent prices" refers to the practice of defendants, of furnishing to a competitor, upon request, most recent prices to a specific customer, with the understanding that by furnishing such information each defendant would receive similar information at any time upon request. Use of the word "exchange" is not intended to convey the impression that there was a mutual interchange between the competitors as to each one's price to a competitor on the same order. Rather, the point being made is that each defendant's right to receive such information whenever it might want it depended upon the willingness to furnish it upon request. In this sense the practice was reciprocal, and during the time covered by the complaint each defendant participated in the communication of price information both as informant and recipient.

While plaintiff does not challenge the right of any defendant to obtain reliable market information for the purpose of maximizing sales and profits, we do insist that in the context of the practices of this industry, cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices is to impose an undue restraint upon the free competition protected by the Sherman Act. While defendants surely have a right to seek market information unilaterally, as from their own records or from customers, when for the purpose of maintaining stable prices to specific customers they obtain information through the cooperation of a competitor or confirm a customer's information by conferring with a competitor, such concerted activity is a combination and conspiracy among competing defendants. The necessary tendency toward price uniformity dictated by economic self-interest is reinforced in the case of direct communication between competitors for a specific order by the pressures of business ethics and honor. The inference is irresistible that when competitors confer on a specific price both implicitly

understand that the recipient of the information will set his own price at the same level or minimize any necessary reduction.

Finally, Plaintiff contends that defendants' "economic" evidence, intended to show that competition and price instability have existed in the industry during the period at issue, cannot serve to rebut Plaintiff's case. The law is well settled that the Government, having shown a conspiracy to restrain price competition, is not bound to prove the success of that conspiracy by proving what prices would have been without said conspiracy. Rather defendants have the burden of demonstrating that the agreement to exchange price information had no effect on competitive price levels, and this they have utterly failed to do. Plaintiff has never contended that defendants exchanged prices as to all transactions with all customers, nor that each exchange resulted in an identical price to that customer. The most that defendants can prove with their documents, charts and graphs is that some price competition did exist in the sale of corrugated containers. They cannot disprove Plaintiff's critical contentions that competition was inhibited, and that what competition did exist was not the free and open competition that would have existed in the absence of the conspiracy.

II. (c) ~~The combination and conspiracy of defendants to~~ exchange most recent prices charged or quoted to specific customers had the purpose and effect of maintaining identical price quotations to the specific customers with respect to whom the information was exchanged or to minimize the amount of any reduction in price to be offered to those customers.

The testimony of the officers and managers of the defendant corporations demonstrates by a preponderance of the evidence that these eighteen defendants combined and conspired to exchange most recent prices charged or quoted to specific customers for corrugated containers for the pur-

pose and with the effect of maintaining identical price quotations to those customers or to minimize the amount of any reduction in price to be offered. Although the witnesses may state it in different ways, the conclusion as to their purpose is clear and it is also clear from their testimony and from other evidence that they achieved their purpose. This direct testimony from the individuals who actually participated in the exchange should be accorded the highest probative value since the defendants' employees have offered no other explanation for their conduct.

The conclusion is inescapable that, when a few competitors who know that they will have an opportunity to share the order at the lowest price quoted, are permitted to directly exchange most recent prices charged or quoted a specific customer, the necessary result will be elimination and minimization of price competition between them as to that particular customer. But defendants seek to escape the force of this logic by contending that exchange of most recent prices cannot affect market behavior because the same information is usually available from a defendant's own files or may be obtained from the customer. Such analysis is demonstrably false, for two reasons.

First, by stressing their interest in obtaining full market data from one another, defendants ignore their customers' conflicting but co-equal interest in maintaining that quantum of uncertainty and flexibility in the market which guarantees that prices will be set by the free operation of market forces. The purchaser's interest is in acquiring his needs at the lowest possible price. His theoretical protection against the maintenance by his suppliers of an artificially high and stable market is his right to call upon a new supplier for a competitive bid when he suspects that his regular suppliers are not giving him the advantage of free and open competition. It is at this point that information as to "past market" is not available to defendants from their files. A new bidder has not sold this market before. Nor is it likely the customer will supply the information, since his purpose in seeking a new source of supply is to obtain a fresh and independent bid. Therefore the ability to obtain

most recent prices charged or quoted from competitors is crucial to defendants. A new bidder can call a regular supplier for the information and thus avoid the danger that he may enter a bid unnecessarily below the prevailing market. A regular supplier is protected by the certainty that a competitor can obtain from him the necessary information. All are secure in the knowledge that none of them through ignorance will "demoralize" the market, to use defendants' exculpatory euphemism. If it is clear that defendants are acting intelligently in their own self-interest, it is also clear they are not acting unilaterally. The purchaser is not dealing with individual competitors, as is his right, but with a cooperative monolith which under the Sherman Act can only be labeled for what it is—a combination and conspiracy in restraint of trade.

There is another, and equally important, reason why the inherent effect of obtaining most recent prices charged or quoted to a specific customer from a competitor rather than from an independent source is more certain to be a tendency toward price uniformity and the elimination of competition between the communicators. This is the intangible but significant coercive force of what may be termed business ethics or social honor when competition consists of only a few well acquainted suppliers. When one obtains a competitor's price from an independent source he is under no implied obligation to his competitor to use that information in any predictable manner. But when such closely associated competitors communicate concerning prices to specific customers it is a reasonable inference that both will expect, by reason of the communication, that the recipient will use the information in a manner in the mutual interest of both.

Plaintiff respectfully submits that the record in this case establishes that defendants' practice of exchanging most recent prices charged or quoted to specific customers had the purpose and the necessary effect of stabilizing prices and minimizing competition among defendants. Under the law this showing, without any proof of actual anticompetitive effect, would be enough to compel a judgment for plaintiff. See *Appalachian Coals, Inc. v. United States*, 288 U.S. 344 (1933); *United States v. American Linseed Oil Co.*, 262

U.S. 371 (1923). In the latter case, the Supreme Court, examining a trade association scheme for exchanging price information, said at p. 390:

concerted action through combination . . . is forbidden when the *necessary tendency* is to destroy the kind of competition to which the public has long looked for protection. [Emphasis added.]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1967

No. 1064

UNITED STATES, Appellant,

v.

CONTAINER CORPORATION OF AMERICA, et al.

Appeal from the United States District Court for the Middle District of North Carolina.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

April 22, 1968.